



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

### Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

### About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>



3 2044 103 265 369



198  
1.05

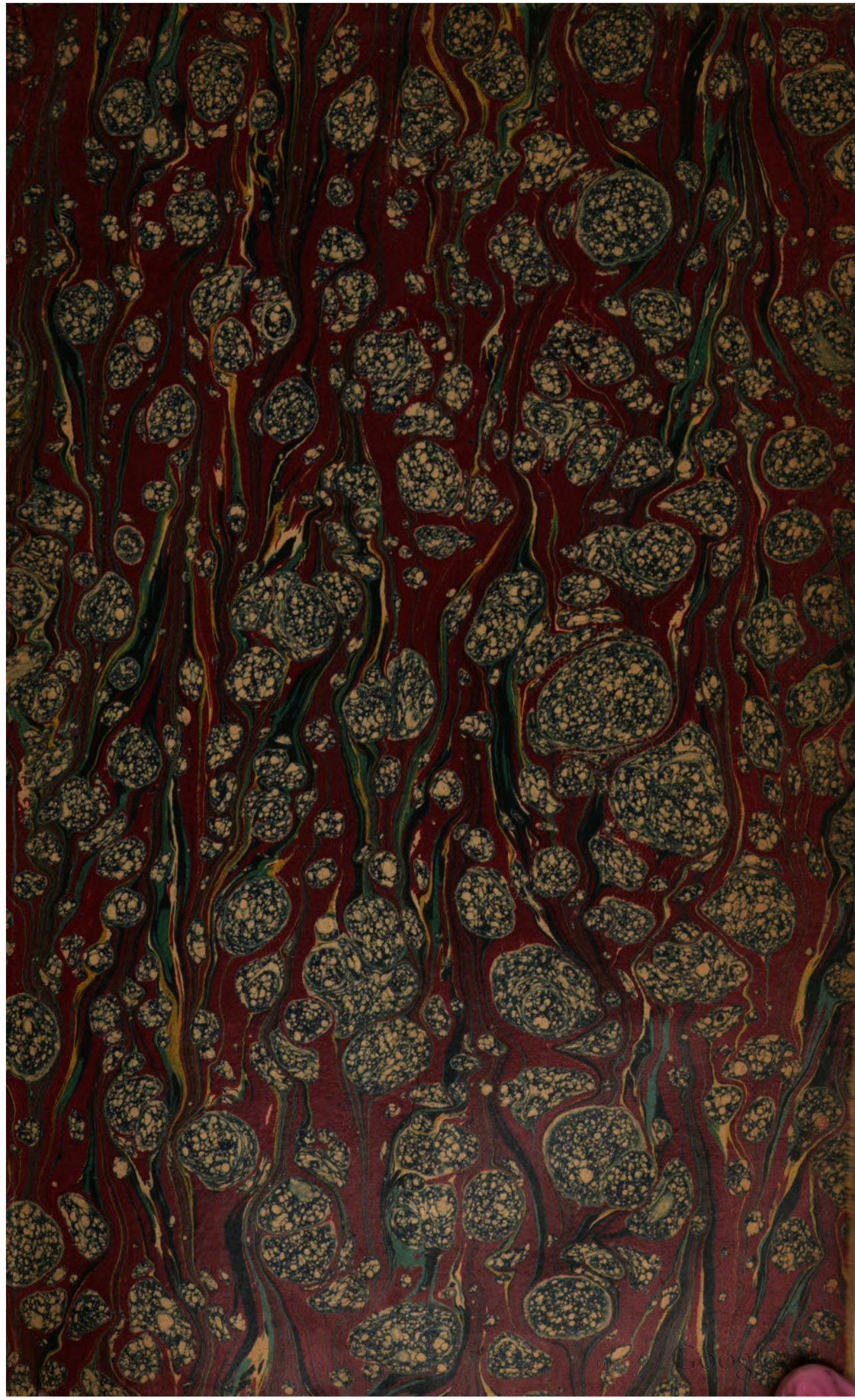


HARVARD LAW LIBRARY

Received

OCT 16 1908











02-16-22







**BURGE ON COLONIAL AND  
FOREIGN LAWS.**

## ASSISTANT EDITORS.

---

### *Law of Canada :*

*Quebec :* Professor F. P. WALTON, Dean of the Faculty of Law, McGill University, Montreal.

*Other Provinces :* Professor A. H. F. LEFROY, Professor of Roman Law and Jurisprudence, Toronto University, Author of "Legislative Power in Canada."

Professor MCGREGOR YOUNG, Dean of the Faculty of Law and Professor of Constitutional Law and History and International Law, Toronto University.

### *Law of the Empire of India :*

The late H. M. BIRDWOOD, C.S.I., LL.D., Barrister-at-Law, late Member of Council, Bombay, and formerly one of the Judges of the High Court of Bombay.

### *Roman-Dutch Law :*

W. R. BISSCHOP, LL.D. (Leyden), Barrister-at-Law, Legal Adviser to the Dutch Legation, London.

### *Australian Law :*

J. E. HOGG, of Lincoln's Inn, Barrister-at-Law, Bar of New South Wales, Author of "Land Registration."

### *French Law :*

J. T. B. SEWELL, LL.D., Solicitor, Legal Adviser to the British Embassy Paris.

### *German Law :*

ERNEST J. SCHUSTER, LL.D. (Munich), of Lincoln's Inn, Barrister-at-Law.

### *Swiss Law :*

J. F. ISELIN, of Lincoln's Inn, Barrister-at-Law.

### *Law of United States :*

HENRY STEPHEN, of the Middle Temple, Barrister-at-Law, and Illinois Bar.

ARTHUR K. KUHN, Counsellor-at-Law, New York.







## WILLIAM BURGE

(From a Miniature in the possession of Dr. Burge,  
Headmaster of Winchester College.)

5714

C4

BURGE'S  
COMMENTARIES ON COLONIAL  
AND FOREIGN LAWS  
GENERALLY

AND IN THEIR CONFLICT WITH EACH OTHER AND WITH  
THE LAW OF ENGLAND.

NEW EDITION,

*UNDER THE GENERAL EDITORSHIP OF*  
ALEXANDER WOOD RENTON,

OF GRAY'S INN, BARRISTER-AT-LAW, PUISNE JUSTICE OF THE SUPREME COURT OF CEYLON,  
FORMERLY JUDGE OF THE SUPREME COURT OF MAURITIUS,

AND

GEORGE GRENVILLE PHILLIMORE, B.C.L.,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

*IN FIVE VOLUMES.*

0

VOL. I.

LONDON:

SWEET & MAXWELL, LIMITED, 3, CHANCERY LANE, W.C.,  
STEVENS & SONS, LIMITED, 119, 120, CHANCERY LANE, W.C.,

*Printed and Published by*

1907.



BRADBURY, AGNEW, & CO. LD., PRINTERS,  
LONDON AND TONBRIDGE.

OCT 15 1908

**Dedicated**

**BY PERMISSION**

**TO THE RIGHT HONOURABLE**

**THE EARL OF ELGIN AND KINCARDINE,**

**K.G., G.C.S.I., G.C.I.E., ETC.**

**SECRETARY OF STATE FOR THE COLONIES.**





## PREFACE.

---

BURGE's "Commentaries" still remain, as when they first appeared, the only legal work which attempts to deal comparatively with the main divisions of the law of persons and property in the systems of the British dominions and those of foreign countries, and their reputation is established among foreign as well as British lawyers.

For the reasons given in the opening pages of the present volume, it has been found impossible to adhere to the lines of the former edition. While care has been taken to preserve all passages expressing Mr. Burge's personal opinions where these have not been superseded or rejected by judicial decisions, it has been felt imperative, in view of the subsequent changes of legal opinion on many points and the mass of new material furnished by a study of modern comparative legislation, to make considerable additions and alterations in the plan and details of the work.

The present volume, intended as the general introduction to the whole, in substitution for the preliminary treatise of the first edition, contains for the most part entirely new materials, and a biographical memoir of Mr. Burge.

The Editors desire, in the first place, to acknowledge gratefully their special obligations to their collaborators who have brought expert knowledge to bear on their respective subjects, and to record their deep regret at the lamented loss of their late colleague Mr. H. M. Birdwood, whose contribution of the special chapters on the laws and judicial constitution of the Indian Empire, and account of the conditions of appeal from Indian Courts to the Privy Council, is characterised by a thoroughness and care which should make those portions of permanent value.

The Editors have also to express their indebtedness to many gentlemen for advice and assistance in the revision of portions of this volume dealing with the legal systems of particular British Colonies and States. Among these they venture to mention Sir Joseph Hutchinson, Chief Justice of Ceylon; Sir Francis Piggott,

Chief Justice of Hong Kong; Sir Lionel Cox, sometime Chief Justice of the Straits Settlements; his Honour Judge Stevenson Moore, First Deemster of the Isle of Man; Sir Dennis Fitzpatrick, K.C.S.I., Member of the Council of India; Sir Roland Wilson, Bart., formerly Reader of Indian Law at Cambridge University; Sir Raymond West, K.C.I.E., Reader of Indian Law at Cambridge University, formerly Judge of the High Court of Bombay; Sir John Jardine, M.P., K.C.I.E., formerly Judge of the High Court of Bombay; Mr. F. G. Wigley, of the English Bar, for revision of the chapters on the Indian Empire; Sir W. H. Greaves, Chief Justice of Barbados; Mr. E. Bateson, formerly Attorney-General of St. Lucia; Mr. J. S. Udal, Chief Justice of the Leeward Islands; Mr. Justice Middleton, Puisne Justice, Ceylon; Mr. A. G. Lascelles, K.C., Attorney-General of Ceylon; Mr. Sydney T. Jones, formerly Judge-President of the Eastern Districts Court, Cape Colony; Mr. Hilgrove Turner, K.C., Attorney-General of Jersey; Mr. Edward Ozanne, Attorney-General of Guernsey; Sir T. C. Rayner, Attorney-General of British Guiana; Mr. B. Frere, Acting Attorney-General, Gibraltar; Dr. Victor Azopardi, Crown Advocate, Malta; and Sir Malcolm McIlwraith, K.C.M.G., Judicial Adviser to the Egyptian Government, for revision of the account of the judicial system in Egypt. Mr. F. H. M. Corbet, of the English Bar, has also given valuable help with the account of the Roman-Dutch law and Ceylon and the law of India, and Mr. H. C. Sproule, of the English Bar, with the account of the law of Ceylon.

The Editors' grateful acknowledgments are also due to the following gentlemen, among others, for kind revision of the portions relating to the systems of foreign law: Dr. Karoly Szladits, Judge of the Royal Court of Justice, Budapest; M. Leone Senigallia, advocate, Naples; M. Harald Boye, advocate, Christiania; M. Gaston de Leval, advocate, Brussels, legal adviser to the British Minister; Mr. E. M. Underdown, K.C., for revision of the account of the Spanish law: and to Dr. S. J. Fockema Andreae, Professor of Roman-Dutch Law at the University of Leyden, and Dr. J. E. Heeres, Professor of Dutch Colonial History at the same University, for assistance with the history of the Roman-Dutch Law: and to Dr. A. Telting and Dr. de Hullu, of the Record Office at the Hague, for valuable information with regard to the early Dutch Colonial State records.

PREFACE.

vii

The Editors also desire to record their special sense of the valuable assistance of Mr. C. E. A. Bedwell, Assistant Librarian of the Middle Temple, who has compiled the memoir of Mr. Burge, the table of authorities and cases, and generally prepared this volume for the press.

A. W. R.

G. G. P.

*March*, 1907.





## MEMOIR.

---

As the "Dictionary of National Biography" contains no notice of the author of this book, it is thought that a memoir may be of interest and, perhaps, of some value.

William Burge was the son of John Burge, of Castle Cary, Somerset. He matriculated at Wadham College, Oxford, in 1808, at the age of sixteen, and took his B.A. degree three years later (*a*). Burge had been admitted to membership of the Inner Temple in the year of his matriculation (*b*), and was called to the Bar May 20th, 1808 (*bb*). Shortly after, he left for Jamaica, and spent twenty years of his life there, of which twelve were occupied in the post of Attorney-General (*c*). On his return to England in 1829 he acted as Agent for the island and practised before the Privy Council. The first reported case in which he appeared was *Sayers v. Whitfield* (*d*), on appeal from St. Vincent, from which it would appear that appeals from a Court of Chancery were permitted without any limitation. In 1830 Burge took his M.A. degree (*e*). In the following year he entered the House of Commons as member for Eye, and sat in the reformed Parliament (*f*). During that period his name is absent from the reports of cases before the Judicial Committee of the Privy Council, but Hansard's Debates show that he was an active Member of Parliament. Whenever any subject in relation to the Colonies, particularly the West Indies, was under discussion Burge could be relied upon to contribute to the debate with exceptional knowledge. In fact, his competence and assiduity in representing Colonial interests to the members of the Imperial Legislature may have presented a strong

(*a*) Foster, "Alumni Oxonienses."

(*b*) "Masters of the Bench of the Inner Temple, 1450—1883."

(*bb*) Law List, 1841.

(*c*) Dedication to "Colonial and Foreign Laws," *infra*, p. xv. Cf. 1 Knapp, 133. As Attorney-General he answered in 1825 the voluminous

inquiries of the West Indies Commissioners (see 1st Report, 1827, pp. 182—234).

(*d*) 1 Knapp, 133.

(*e*) Foster, "Alumni Oxonienses."

(*f*) "Return of Members of Parliament, 1213—1874," pp. 320, 333.

argument against his plea for "the absolute necessity of having the Colonies represented in Parliament" (*ff*). Upon domestic affairs he spoke rarely, and his principal contributions to the debates were during the progress of the Parliamentary Reform and Bankruptcy Court Bills.

Burge was created an honorary D.C.L. in June, 1834 (*g*), took silk at the end of the year, and was called to the bench of his Inn (*h*). Early in 1835 Burge was appellant as Agent for Jamaica as well as counsel in the *Case of the Commissioners for Compensation under the Act for the Abolition of Slavery* (*i*). In consequence of the decision, general rules were issued by the Commissioners applicable to all the Colonies included in the Act, except Mauritius and the Cape of Good Hope. Burge appeared in 1836 in *Beaumont v. Barrett* (*k*), which deals fully with the history of the island of Jamaica, and in the same year represented the respondent in the important case of *Retemeyer v. Obermuller* on appeal from Berbice (*l*).

In 1838 the "Commentaries on Colonial and Foreign Laws" were published, and met with a cordial reception from the profession, not only in this country, but also on the other side of the Atlantic, where Mr. Justice Story wrote in eulogistic terms of the work (*m*). At this time Burge had attained to a foremost position as an advocate, and enjoyed an extensive practice in appeals, not only from the West Indies and British Guiana, but also from other parts of the British Empire (*n*), which made him

(*ff*) Hansard's Debates, Aug. 16th, 1831, vi. 139.

(*g*) Foster, "Alumni Oxonienses."

(*h*) "Masters of the Bench of the Inner Temple, 1450—1883."

(*i*) 3 Knapp, 155.

(*k*) 1 Moo. P. C. 59, cited *infra*, p. 245.

(*l*) 2 Moo. P. C. 93.

(*m*) Advertisement to "Conflict of Laws." Testimony to the enduring value of Burge's labours is borne by Professor von Bar in his work on "International Law" (2nd ed., translated by G. R. Gillespie, 1892), where he writes (p. 46): "This most comprehensive work, consisting for the most part of a comparison of the different systems of law that are

recognised throughout the British Empire, is remarkable for the astounding knowledge of the most various systems of law and of legislation displayed by the author, for the wealth of legal cases and decisions that are cited and criticised with acuteness and great independence, and for many excellent discussions of different questions."

(*n*) See, for example, Monckton, *In re* (1837), from Prince Edward Island (cited *infra*, p. 381); *Cain v. Cain* (1838), from Isle of Man (cited *infra*, p. 129); *St. Louis v. St. Louis* (1841), from Lower Canada, 3 Moo. P. C. 398; *Touzel v. Filleul* (1841), from Jersey (*ibid.*, p. 484); and *Gahan v. Lafitte* (1842), from St. Lucia (cited *infra*, p. 255).

familiar with the different systems of law expounded in his book. Although the work of the Judicial Committee was not so great as at the present time, there was almost the same variety in the systems of jurisprudence of which they were expected to be the interpreters. Out of one hundred and sixty-five appeals from colonial possessions pending on February 15th, 1837, one hundred and fifteen were appeals from Courts in which English jurisprudence did not prevail, and consequently had to be decided according to the Coutume of Paris, the Code Civil, the Roman-Dutch law, or the law of Trinidad (o).

*Bowerbank v. The Bishop of Jamaica* (1838) (p), in which Burge appeared for the respondent; was of interest as regards the ecclesiastical law of the island, and also in defining the status of a party who declines to be represented by counsel after an appearance has been given in on his behalf. *In re Muir* (1839) (q), in which Burge was counsel, established that the Judicial Committee cannot issue a writ of mandamus to the judges of a colonial Court. If their conduct is unsatisfactory it must be amended by a representation in the proper quarter.

Burge was elected a Fellow of the Royal Society and of the Society of Antiquaries on May 21st, 1840, at the same time as the Prince Consort became a Fellow of those Societies.

In 1841 Burge published, with a dedication to Lord Cottenham, an interesting pamphlet upon the appellate jurisdiction of Great Britain. It set forth the extensive jurisdiction of the Crown in Council, and described the manner in which it was exercised before the constitution of the Judicial Committee. Burge was impressed, as everyone must be who is called upon to consider the subject, with the tremendous scope of the operations of the Committee and the millions of people indirectly affected by its conclusions. His objections to the tribunal and proposals to render it more worthy of its unique position are still current, and render the historical and critical contents of the pamphlet of permanent value. The entire absence of any opportunity for many members of the Supreme Appellate Court of the Empire to acquire any intimate knowledge of the systems of jurisprudence, which they are called upon to administer, was one objection made by Burge, which can still find

(o) Burge's "Observations on the Appellate Jurisdiction of Great Britain," p. 19.

(p) 2 Moo. P. C. 449.

(q) 3 Moo. P. C. 150, and see Manning's Case, 3 Moo. P. C. 154.



many supporters. His plea for the union of the judicial work of the House of Lords with the Judicial Committee into one Imperial appellate tribunal, with a president at its head, continues to have strong advocates (*r*).

In 1840 Burge removed from his chambers in Lincoln's Inn to 1, Paper Buildings, Temple. He took a great interest in the completion of the restoration of the Temple Church, which had been partially carried out in the years 1825 to 1827, and was a member of the joint committee of Benchers of the Inner and Middle Temples under whose instructions were effected the repairs of the roof and east end. Burge published in 1843 an unofficial record of the work and a defence of their actions, which had been subjected to criticism. It was recognised that the restoration of the noble edifice to some of its former grandeur and dignity required corresponding action in regard to the services. Accordingly the assistance of women professional singers was dispensed with, and provision made so ample as "to obtain such a choir as would not only by the adequate number, but by the vocal and musical qualifications of its members, secure the restoration of the choral service in its most perfect state, and that it might thus again become what is described to be, in the language of an authority [Hooker] who has peculiar claims to the veneration of these societies, 'an ornament to God's service and a help to our own devotions.'" Thus wrote Burge in a pamphlet on "The Choral Service of the Anglo-Catholic Church," published in 1844, in which he deplored "that there is not daily choral service" in the Temple Church. In the same year he was made Reader and Treasurer of the Inn.

One of the last cases in which Burge pleaded before the Privy Council was heard at the end of 1844. He appeared on behalf of a petition *In re the Bailiff and Jurats of the Royal Court of Guernsey* (*s*). In the following year he was made Commissioner of Bankrupts at Leeds, but only held the post for a short time, as he was obliged to retire on account of pecuniary embarrassments (*t*). Upon resigning also the duties of the office of the agent of Jamaica he had leisure to continue his studies in comparative

(*r*) See, for example, despatches of the Colonial Governments respecting the Colonial Conference, 1907, Parl. Pap., Cd. 3337.

(*s*) Cited *infra*, p. 141; 5 Moo. P. C. 49.

(*t*) "Annual Register, 1849," p. 285.

jurisprudence, and in 1847 published "The Law of Suretyship," which was reprinted in 1849. Burge was Recorder of Winchester from 1844 to 1847. He died on November 12th, 1849, aged sixty-three, and was buried in the Temple Church, on the 17th of the same month, by the Rev. F. D. Maurice, then chaplain of Lincoln's Inn (*u*).

Burge married first Miss Helen Ludford, of Ansley Hall, Warwickshire, who died August 19th, 1839, at the age of forty-seven, and was buried in the Temple Church (*v*), and secondly Miss Alison, daughter of the historian. Dr. Burge, headmaster of Winchester College, his grandson through the first wife, has kindly approved this notice, and lent the miniature which is reproduced as the frontispiece.

(*u*) "Register of Burials at the Temple Church, 1628—1853," p. 85.      (*v*) *Ibid.*, p. 84.



## PREFACE TO FIRST EDITION.

---

THE objects and plan of this work are stated in the following letter to the noble and learned lord to whom it is dedicated.

During its progress assistance has in the kindest manner been rendered to me whenever I have requested it. I am anxious to acknowledge it, and to express my sense of the obligations which it has conferred on me.

The noble lord, Her Majesty's principal Secretary for the Colonies (*a*), afforded me every facility for acquiring all the information which his office could supply. It was given with that readiness and accompanied with those expressions of interest in the prosecution of this work which are characteristic of his kind and friendly disposition, and of which during the whole of my official intercourse with his Lordship I have received so many proofs.

To the Right Honourable C. P. Thomson (*b*), the President of the Board of Trade, I am greatly obliged for the access which he afforded me to the documents in his office.

To James Stephen, Esq. (*c*), one of the under-Secretaries of State for the Colonies, I consider myself greatly indebted for the friendly manner in which he permitted me to refer to him, and avail myself of his great experience and extensive acquaintance with colonial subjects.

To George Mayer, Esq., the Librarian of the Colonial Office, I offer my best thanks for the courteous assistance which he always rendered me, and for the facilities which he afforded me in referring to the laws and documents in his office. Those who have had occasion to resort to this office will join in the commendation so

[*(a)* Charles Grant, Lord Glenelg, whose administration at the Colonial Office lasted from 1835 to 1839.

[*(b)* Afterwards Baron Sydenham on succeeding Lord Durham as Governor-General of Canada

[*(c)* He was made a K.C.B. and Privy Councillor in recognition of his strenuous services at the Colonial Office, and was father of Sir James Stephen, Judge of the High Court of Justice, and Sir Leslie Stephen, K.C.B.]

justly merited by the admirable method and arrangement with which its immense mass of correspondence and documents are classed and preserved, and which admit of the most prompt reference to any subject on which information is sought.

I was relieved from the labour of finally examining the revised sheets as they came from the printer by my friend Richard Heathfield, Esq., of the Chancery Bar. He kindly undertook this task, irksome in itself, but at the same time requiring those qualities of critical accuracy and attention which he possesses in an eminent degree.

The Index is entirely the work of another friend of the same Bar, W. W. Mackeson, Esq. (*d*). Its fulness and arrangement, whilst they reflect on him the greatest credit, increase my obligations to him for the kindness with which he undertook it, and for the manner in which he has performed it.

WILLIAM BURGE.

[(*d*) He was the second son of John Mackeson, of Blue Mountain, Jamaica, where he went to practise for some years. After his return to England he was made Q.C. and bencher of his Inn in 1868.]

TO  
THE RIGHT HONOURABLE  
HENRY LORD LANGDALE,  
MASTER OF THE ROLLS,  
ETC., ETC., ETC.

---

MY LORD,

In this work, which your Lordship has permitted me to dedicate to you, it has been my object to bring together those several systems of colonial and foreign jurisprudence which constitute a considerable part of the law administered by the supreme appellate tribunal of the British Colonial Empire, and which are frequently the subjects of judicial consideration by the other tribunals of this country. They are presented in contrast with the law of England, and when they conflict with that law, or with each other, I have endeavoured to ascertain and state the principles on which the selection of one of those laws should be made.

In several of the dependencies of Great Britain a system of jurisprudence prevails wholly different from the law of the parent State. In some of them it consists of peculiar local enactments combined with the law of England. In others the law of England is entirely excluded. In some of the latter its place is supplied by the Roman-Dutch law, in others by the law of France as it existed before the Code Civil, and in others by the law of Normandy. In one Colony the law of Spain is adopted, and in another Colony the Code Civil.

It might be presumed that the supreme appellate tribunal of the parent State has an acquaintance with these several systems of jurisprudence at least equal to that possessed by the local Courts administering those systems, and whose decisions it corrects and reviews.

B.C.L.

b



The large interests which numerous persons resident in Great Britain hold in her colonial possessions, and the intercourse with foreign nations so much promoted by the relations of peace, afford frequent occasions in which the Courts, both of equity and law, in this country, adjudicate on rights to real and personal property which are wholly derived from foreign laws.

There is a necessity, therefore, for ascertaining and applying those laws.

It is true that a Court of equity relieves itself from this investigation by referring it to one of its subordinate officers to ascertain the foreign law on which the parties rely, or which is involved in the question submitted for adjudication.

Without presuming to question the propriety of this course, it may be doubted whether it is not a consequence of the Court divesting itself of all previous consideration of the foreign law that this reference is frequently made where it is wholly unnecessary.

It may happen that the foreign law may not be that which in a conflict between it and the domestic law ought to govern the decision of the question, or the conflict may be between two foreign laws. A previous knowledge of those laws might have enabled the Court in the one case to perceive that the foreign law would not govern the decision of the case, and in the other to select that particular law which was to govern the decision. The expense and delay of a reference which in the one case was not required at all, and in the other was of a less restricted nature than was requisite, might have been avoided. The means by which the Court endeavours to become informed of the foreign law do not always effect that object. The interrogatories for the examination of a foreign jurist, prepared by a counsel who, however well skilled in the knowledge and practice of the English law, may possess an imperfect acquaintance with the foreign law, will not always be adapted to elicit from the witness such answers as will supply the full information connected with the foreign law which may be eventually requisite to enable the Court to make a correct application of it. Even if that information be obtained, its application must always be made with greater certainty and accuracy by those who have some previous acquaintance with it.

The spirit in which these observations are made is perfectly compatible with all the respect and confidence with which, as an

English lawyer, I contemplate the jurisprudence of England and its administration. An acquaintance with other systems of jurisprudence can only increase that respect, and confirm that confidence.

The study of foreign jurisprudence has hitherto received little encouragement from an English lawyer. The attainment of a knowledge of his own profession requires all the time which is devoted to its acquisition. Having entered on his career as an advocate, if he acquires extensive practice, the high-road which he follows has too many objects of honourable ambition before and on each side of it to induce him to stray into the less inviting path of foreign jurisprudence.

From these and other considerations, it appeared to me that it might be useful to the public, and acceptable to the profession, if there were furnished a more ready access to the sources from whence an acquaintance might be derived with those systems of foreign jurisprudence which are most frequently presented to the consideration of an English tribunal.

The following work aims at the accomplishment of that object. In commencing it, I was fully conscious of its difficulties. I even felt that, in the very undertaking itself, there might seem a presumptuous confidence which I disclaim. This feeling has not been removed, nor even lessened, but, on the contrary, confirmed and increased, in the prosecution and completion of this work. Yet I have endeavoured to bestow on it the time and research which it required.

I should not have entertained the design of engaging in this work if I had not previously acquired some knowledge of the systems of jurisprudence which it embraces. I passed twenty years of my professional life in Jamaica, and during twelve years I held there the office of Attorney-General. From the extensive intercourse with Europe and America which this Colony during that period enjoyed, the occasions were frequent when I found it necessary to resort to these systems of jurisprudence.

The systems of jurisprudence comprised in this work are—(1) the Civil Law, the great source from which every other code has largely borrowed; (2) the law of Holland as it existed before the promulgation of the Code Civil; (3) the law of Spain; (4) and (5) the Coutumes of Paris and Normandy; (6) the present law

of France; (7) the law of Scotland; (8) the law of England; (9) the local laws of the Colonies in the West Indies and North America; (10) the laws of the United States of America.

The law of England forms so considerable a part of the jurisprudence of those Colonies and of the United States, that it could not be omitted without rendering the view of that jurisprudence incomplete and imperfect. Its peculiarities also serve to illustrate and render more striking the distinction between it and other systems of jurisprudence. I have also been influenced by the desire of affording foreign jurists the means of becoming acquainted with English law, and those means may be facilitated when it is placed in contrast with the law of their own country.

The several systems of jurisprudence which have been just enumerated are considered in the following work in their relation to and dealing with all those subjects which may be classed under the heads of the status of persons and title to things, or property immovable and movable, by contract, by operation of law, by succession *ab intestato*, by testament.

The first volume commences with a preliminary account of the several systems of jurisprudence adopted in our Colonies, and of the appeal from the decisions of their Courts to Her Majesty in Council. It then treats of the status of persons, the rights, capacities, incapacities, and obligations which are incident to it, and its effects on property. It comprises therefore the status of legitimacy, of husband and wife, of minors, of aliens, and slavery.

The status of husband and wife necessarily includes the constitution and dissolution of marriage, and its effects on property.

The law of the domicile has so extensive an influence on the decision of the various questions to which the status of persons and the title to movable property give rise, that a consideration of these subjects is preceded by an examination of the various circumstances which establish a domicile.

The title to immovable and movable property by contract and operation of law is the subject of the second and third volumes.

2) The second volume commences with the distinctions between immovables and movables, and between those movables which are called *biens propres*, *bona avita*, and *biens acquêts*, *bona acquisita*, or, to adopt the analogous distinction of the English law, the title by descent and that by purchase. It then proceeds with the title

to immovable property by contract. It shows the various estates and interests in it which may be created, and the effect which these modifications may have on the ownership. The alienation of immovable property by sale involves the consideration of the contract essential to the completion of it, as distinguished from the transfer of the *dominium*, the manner in which such transfer is made, and its registration. The other modes by which the alienation takes place, as by gift, exchange, etc., are next considered.

The title by operation of law and the acquisition of rights in immovable property, as distinguished from the ownership or *dominium*, are then considered. Under this head are classed the title by prescription, the rights of servitude, usufruct, mortgage.

A similar course of examination is followed in treating of the title to movable property by contract, and by operation of law. It comprises the contracts of sale, gift, pledge, bailment.

*Quasi-contracts* follow. They involve the appointment, interests, duties, and powers of guardians, curators, receivers, mandatories, etc.

In the conclusion of the third volume bankruptcy and foreign judgments are considered.

The subject of the fourth volume is the title to immovable property by succession *ab intestato* and by testament. It is commenced by a discussion on the opening of the succession, and on the presumptions of death or survivorship, which some codes of jurisprudence admit, when from absence, or from the circumstances under which two persons die, proof of the death or survivorship cannot be adduced. It then proceeds to treat of the succession *ab intestato*, and of the persons whom the law calls, and the order in which it calls them, to the succession, and of the several subjects which belong to these general heads.

Succession by testament follows. In treating of the power of disposing by testament and the restrictions on the exercise of that power, the right of children and some other heirs to a certain portion of the testator's property, their *pars legitima* or *legitime* becomes a subject of consideration. The forms and solemnities essential to the validity of the testament, the rules of construction, the operation and effect given to the testament, are the subjects which then follow. The concluding part of the volume embraces those subjects which are applicable to intestate and testate succession, and regard the title of the heir, his interest in, his

acceptance or renunciation of, the succession, the mode in which it may be made, the *annus deliberandi*, the benefit of inventory, the separation of the ancestor's estate from that of the heir, collation, and the appointment of testamentary executors.

There is a great conflict between the several codes of jurisprudence which this work comprises in their manner of dealing with these various subjects. It frequently becomes essential to the justice of the judicial decision that it should be founded on a selection of one of these conflicting laws. The principles on which the selection should be made constitute an important branch of jurisprudence. It forms a part of this work. The statement of those principles follows the summary of the laws whenever an occasion for their application is afforded either by any discrepancy in those laws, or by the nature of the subject on which there exists the discrepancy.

This branch of jurisprudence does not appear to have excited the interest of English lawyers. The doctrines held in Scotland for so long a period on the law by which the succession to an intestate's movables should be regulated show how little it engaged the attention of the jurists of that country.

Its discussion was to be found only in the writings of Continental jurists until Mr. Justice Story bestowed on it the learning and research for which he is so eminently distinguished. His treatise on the conflict of laws, foreign and domestic, is cited by English judges with the high commendation it so justly merits, and international jurisprudence is largely indebted to him. If it had been part of the plan of his work to have entered into a detailed account of the various systems of jurisprudence, he would have more fully developed and rendered more obvious the application of the principles by which a judicial tribunal should be governed in the selection of one of the several conflicting laws.

I am too well aware of the extent and variety of the subjects embraced by this work to anticipate that I shall have afforded satisfaction upon all of them, but at least I may hope that I have facilitated the means by which such satisfaction may be obtained from other sources.

Your Lordship may recollect that in the progress of this work I communicated to you the plan I proposed, and the object I sought to accomplish. You then expressed your opinion of its utility; I

felt therefore desirous of dedicating to your Lordship the result of labours which your opinion encouraged me to prosecute.

I was gratified, too, by the opportunity thus afforded me of evincing my high esteem and respect for your character, and of expressing my cordial participation in the satisfaction with which the public and the profession regard your elevation to the Bench.

I have the honour to be,

My Lord,

Your Lordship's

Very obedient and humble Servant,

WILLIAM BURGE.

LINCOLN'S INN,  
*October, 1837.*





## TABLE OF AUTHORITIES.

---

- Aitchison, Sir Charles Umpherston. A Collection of Treaties, Engagements, and Sanads. 3rd edition. 11 vols. Calcutta. 1892.
- American Law, Two Centuries Growth of, 1701—1901. By Members of the Yale Law School. New York. 1901.
- Andree, S. J. Fockema.  
     Overzicht van Oud-Nederlandsche Rechtsbronnen. Haarlem. 1881.  
     Het Oud-Nederlandsch Burgerlijk Recht. Haarlem. 1906.  
     Bijdragen tot de Nederlandsche Rechtsgeschiedenis. 4 vols. Haarlem.
- Anglo-Indian Codes. Edited by Whitley Stokes. 2 vols. Oxford. 1887—1888.
- Annual Register. 1758. 1777. [In progress.] London.
- Anson, Sir William. Law and Custom of the Constitution. 2 vols. Oxford. 1896—1897.
- Appeals to the Queen in Council, Orders in Council, &c., relating to. London. 1862.
- Bahamas. Laws, 1795—1899. London. 1901.
- Basnage. Oeuvres contenant ses Commentaries sur la Coutume de Normandie. 2 vols. Rouen. 1778.
- Bell, Robert. Report of a case of legitimacy under a putative marriage. Edinburgh. 1825.
- Berg, J. van den. Nederlands Advijs-Boek. Amsterdam. 1707—1719.
- Berry, William. History of the Island of Guernsey. London. 1815.
- Beucker, J. Decisiones Curiae Frisiacae. Leovardiae. 1780.
- [Bird, William Wilberforce]. State of the Cape of Good Hope in 1822. London. 1823.
- Bombay. Local Rules and Orders. Bombay. 1896.
- Bonnefoy, Théophile. Table Générale, Alphabétique et Analytique. Mauritius. 1853.
- Bonnier. Traité des preuves. 5th edition. Paris. 1887.
- British Columbia. Revised Statutes, 1897. 2 vols. Victoria. 1897.
- British enactments in force in Native States. Compiled by J. M. Macpherson. 2nd edition. 6 vols. Calcutta. 1899—1900.
- British Guiana. The Laws, 1774—1905. 5 vols. London. 1905.
- British Empire Series. Vol. v., General. London. 1901.
- British Honduras. Consolidated Laws. London. 1887.
- British New Guinea. Laws and Ordinances. Brisbane. 1898.
- Brünner, H. Deutsche Rechtsgeschichte. 2 vols. Leipzig. 1887—1892.  
     Grundzüge der Deutschen Rechtsgeschichte. Leipzig. 1903.
- Buckle, H. O. Civil Practice of the Magistrates' Courts in the Transvaal. Grahamstown. 1905.
- Buller, F. The Law Relative to Trials at Nisi Prius. London. 1772.
- Burge, William.  
     Observations on the Supreme Appellate Jurisdiction. London. 1841.  
     The Temple Church. London. 1843.  
     The Choral Service of the Anglo-Catholic Church. London. 1844.  
     The Law of Suretyship. London. 1849.
- Bynkershoek, L. van. Opera Omnia. 6 vols. Lugduni Batavorum. 1744.
- Calendar of State Papers. America and West Indies. 1669—1674. London. 1889.
- Cambridge Modern History. Vol. i., The Renaissance. Cambridge. 1902.
- Canada. Revised Statutes, 1886. 2 vols. Ottawa. 1887.
- Cape of Good Hope, State of the. By a Civil Servant. See W. W. Bird.  
     Statute Law. 1714—1853. Cape Town. 1862.  
     Statutes, 1652—1904. 4 vols. Cape Town. 1895—1904.
- Cape Law Journal. 17 vols. Grahamstown. 1885—1900. See also South African Law Journal.
- Carey, Laurent. Institutions, lois et coutumes de Guernesey. Guernsey. 1889.

- Ceylon. Collection of Legislative Acts. 2 vols. Colombo. 1853—1854.  
 Revised Edition of the Legislative Enactments. 1656—1900. 4 vols.  
 Colombo. 1900—1904.  
 New Law Reports. Colombo. 1874. [In progress.]  
 Almanac and Annual Register. Colombo. 1855.  
 Literary Register. Colombo. 1886—1896.
- Chalmers, G. A Collection of Treaties. 2 vols. London. 1790.  
 Opinions of Eminent Lawyers. 2 vols. London. 1814.
- Clark, C. A Summary of Colonial Law. London. 1834.
- Clement, W. H. P. The Law of the Canadian Constitution. 2nd edition.  
 Toronto. 1904.
- Clunet, E. Journal du droit international privé. Paris. 1874. [In progress.]
- Code Civil, Le. 1804—1904. Livre du Centenaire. Paris. 1904.  
 Italien, traduit, annoté par Prudhomme. Paris. 1896.
- Colonial Office List. London. 1905—1907.
- Comparative Legislation. See Journal of the Society.
- Comyns, Sir John. A Digest of the Laws of England. 5th edition. 8 vols.  
 London. 1822.
- Consultation. Gelderesche Consultation. See M. A. van. Lamsweerde.  
 Hollandsche Consultation, together with the Index. 8 vols.  
 Amsterdam. 1696.  
 Utrechtsche Consultation. 8 vols. Utrecht. 1695—1700.  
 Vervolg op de Hollandsche Consultation en Advijsen. 2 vols.  
 Amsterdam. 1780—1782.
- Coren. Observationes rerum in Senatu Hollandiæ, Zelandiæ, Frisiæ, judicatarum. Hagæ Comitum. 1633.
- Covarruvias. Opera Omnia. Antwerp. 1638.
- Cowell, H. The Courts and Legislative Authorities in India. 2nd edition.  
 Calcutta. 1884.
- Cunningham, H. S. Indian Evidence Act. No. 1 of 1872. 4th edition.  
 Madras. 1878.
- Curnin's Index to the Laws of New Zealand. 14th edition. Wellington. 1905.
- Cyprus Law Reports. 1883. Miosia. 1893. [In progress.]
- Decisien en Observatie van den Hove van Holland. 1751.
- De le Court. Codes Belges et lois usuelles. Brussels. 1906.
- Dictionary of National Biography. 68 vols. London. 1885—1904.
- Duncan, J. History of Guernsey. London. 1842.
- East Africa Protectorate Law Reports, 1897—1905. London. 1906.
- Edits et Ordonnances. 3 vols. Quebec. 1854.
- Encyclopædia Britannica. 9th edition. 33 vols. Edinburgh. 1875—1903.
- Encyclopædia of the Laws of England. 13 vols. London. 1897—1903. 2nd  
 edition. 1906. [In progress.]
- Encyclopædie van Nederlandsch Indië. 4 vols. 's Gravenhage-Leiden.
- Esmein. Cours élémentaire d'histoire du droit Français. Paris. 1897.
- Field, C. D. Regulations of the Bengal Code. Calcutta. 1875.
- Forsyth, William. Cases and Opinions on Constitutional Law. London. 1869.
- Foster, J. Alumni Oxonienses. 1715—1886. 4 vols. London. 1888.
- Gibbon, Edward. The History of the Decline and Fall of the Roman Empire.  
 Edited by J. B. Bury. 7 vols. London. 1896—1900.
- Gibraltar Laws, 1890. London. 1890.
- Goris, L. Adversariorum juris subcisorum ad lucem consuetudinis. Arnhem.  
 1635.
- Grenada. The Laws. London. 1897.
- Groenewegen van der Made, S. A. Tractatus de legibus abrogatis. Amsterdam.  
 1669.
- Grotius, H. Apologeticus eorum qui Hollandiæ Westfrisiæque et vicinis  
 quibusdam nationibus ex legibus præfuerunt ante mutationem quæ evenit  
 anno, 1618. Heidelberg. 1629.
- Grotius, Hugo.  
 Inleydinghe tot de Hollandsche Rechtsgeleerdheid. See also p. 89,  
 footnote (r). Amsterdam. 1767.  
 Houderd Rechtsgeleerde Observatie. 2 vols. 's Gravenhage. 1776.

- Hall, W. E. *Foreign Powers and Jurisdiction of the British Crown*. Oxford. 1894.
- Hansard. *Parliamentary Debates*. 1830—1891. 356 vols. London. 1831—1891.
- Hayford, C. *Gold Coast Native Institutions*. London. 1903.
- Hertslet. *Commercial Treaties*. London. 1820. [In progress.]
- Houston. *Documents Illustrative of the Constitution of Canada*. Toronto. 1891.
- Holland, T. E. *The Elements of Jurisprudence*. 10th edition. Oxford. 1906.
- Howell, A. *Admiralty Law*. Toronto. 1893.
- Huber. *System und Geschichte des Schweizerisches Privatrechts*. 4 vols. Basel. 1886—1893.
- Huber, Zacharias. *Observationes rerum in suprema Frisiorum Curia judicatarum*. 2 vols. Leovardiæ. 1723—1727.
- Huber, Ulrich. *Hedendaegsche Rechtsgeleerheyt, Beginselen der friesche rechtskunde*. Amsterdam. 1768.
- Huc. *Commentaire théorique et pratique du Code civil*. 15 vols. Paris. 1891—1898.
- Ilbert, Sir Courtenay. *The Government of India*. Oxford. 1898.
- Legislative Methods and Forms. Oxford. 1901.
- India. See also *Anglo-Indian Codes*.  
A Collection of Statutes relating to India. 13 Edw. I.—44 & 45 Vict.  
Edited by Whitley Stokes. 3 vols. Calcutta. 1880—1881.  
Code of Criminal Procedure, 1898. Calcutta. 1903.
- Inner Temple. See *Masters of the Bench*.
- Institut de droit International. *Tableau général*. Paris. 1893.  
*Tableau décennal*. Paris. 1904.
- Isle of Man, Statutes of the, 1417—1895. Edited by J. F. Gill. 6 vols. London. 1883—1897.
- Jardine, John. *Notes on Buddhist Law*. Rangoon. 1882.
- Jenks, E. *The Government of Victoria*. London. 1891.
- Jenkyne, Sir Henry. *British Rule and Jurisdiction beyond the Seas*. Oxford. 1902.
- Jersey. *Lois et réglemens passés par les états de Jersey*. 1771 to 1899. 6 vols. Jersey. 1878—1899.
- Johnson, James. *A View of the Jurisprudence of the Isle of Man*. 8vo. Edinburgh. 1811.
- Journal of the Society of Arts. London. 1852. [In progress.]
- Journal of the Society of Comparative Legislation. Edited by Sir John Macdonell and E. Manson. London. 1896. [In progress.]
- Keessel, D. G. van der. *Theses selectæ juris Hollandici et Zelandici*. Lugd. Batavorum. 1800.
- Kent. *Commentaries on American Law*. 4th edition. 4 vols. Boston. 1896.
- Klerk de Reus J. C. *Geschichtlicher Ueberblick der Administrativen, Rechtlichen und Finanzellen Entwicklung der Niederländische Ostindische Compagnie*. Batavia's Gravenhage. 1894.
- Kop, C. van der. *Nieuw Nederlandsch Advijs-boek*. 2 vols. 's Gravenhage. 1769—1782.
- Kyshe. See Norton-Kyshe.
- Laet, Johannes de. *Historie ofte Jaerlijck Verhael van de Verrichtingen der Geotroyeerde West Indische Compagnie*. 1641.
- Lamsweerde, M. A. van. *Gelresche Consultation en Advijscen*. 3 vols. 1776—1782.
- Law Magazine and Review. 4th Series. London. 1876. [In progress.]
- Law Quarterly Review. Edited by Sir F. Pollock. 1885. [In progress.]
- Leeuwen, Simon van. *Het Rooms-Hollandsch Recht*. 2 vols. Amsterdam. 1780.
- Commentaries on Roman-Dutch Law. 2 vols. London. 1881—1886.
- Leeward Islands Magistrates Acts. London. 1892.
- Lee-Warner, Sir William. *The Protected Princes of India*. London. 1894.
- Lefroy, A. H. F. *The Law of Legislative Power in Canada*. Toronto. 1897—1898.

- Le Geyt, Philippe. *Les Manuscrits sur la constitution, les lois et les usages.* 4 vols. Jersey. 1846—1847.
- Le Quesne, Charles. *A Constitutional History of Jersey.* London. 1856.
- Linden, Joannes van der.  
Gewijsden der Gerechts-hoven in Holland. Leyden. 1808.  
Rechtsgeleerd Practicaal en Koopmans Handboek. Amsterdam. 1806.
- Loenius, Joannes. *Decisien en Observatie, door Tobias Boel.* Amsterdam. 1712.
- Lucas, C. P. *Historical Geography of British Colonies :—*  
Vol. i., *Mediterranean and Eastern Colonies.* 2nd edition. Oxford. 1906.  
Vol. ii., *West Indies.* Oxford. 1890.  
Vol. iii., *West Africa.* 2nd edition. Oxford. 1900.  
Vol. iv., *South and East Africa.* Part 1, revised. Oxford. 1900.  
Part 2, revised. Oxford. 1900.  
Vol. v., *Canada.* Part 1. Oxford. 1901.
- Lucas, S. *Charters of the Old English Colonies.* London. 1850.
- Macpherson, W. *Practice of the Judicial Committee of the Privy Council.* London. 1873.
- Macqueen, J. *Appellate Jurisdiction of the House of Lords and Privy Council.* London. 1842.
- Maitland, F. W. *Roman Canon Law in the Church of England.* London. 1898.
- Maleville. *Analyse raisonnée du Code Civil.* 4 vols. Paris. 1822.
- Malta. *Lois Civiles par Clément Billiet.* Paris. 1896.  
*Ordinances.* 1869. [In progress.]
- Manitoba. *Revised Statutes, 1902.* Winnipeg. 1903.
- Manu, *The Laws of.* Translated by G. Bühler (*Sacred Books of the East*). Oxford. 1886.
- Martens, G. H. de. *Nouveau Recueil général de Traités.* 2me serie. Paris. 1853. [In progress.]
- Master of the Bench of the Inner Temple. 1450—1883. [Not published.]
- Matthæus, Ant. *Observationes rerum judicatarum a supremo Ultrajecti revisionis concessu.* Lugduni Batavorum. 1676.
- Mauritius. *Laws.* Edited by Mr. Justice Rouillard. 9 vols. Mauritius. 1866.  
*Revised Laws, 1897.* 3 vols. Mauritius. 1896—1897.  
*The Laws of Mauritius.* 7 vols. Port Louis. 1905.
- Mayne, J. D. *Criminal Law of India.* 3rd edition. Madras. 1904.  
*Hindu Law and Usage.* 6th edition. Madras. 1900.
- Meili, F. *International Civil and Commercial Law.* Translated by A. K. Kuhn. London. 1905.
- Merlin. *Répertoire universel et raisonné de jurisprudence.* 18 vols. Paris. 1827—1830.
- Merula, O. *Manier van Procederen in Hollandt, Neelandt ende Westvrieslandt.* 2 vols. Leyden. 1781—1783.
- Mill, J., and Wilson, H. H. *The History of British India.* 9 vols. London. 1840—1848.
- Mills, A. *Colonial Constitutions.* London. 1956.
- Mills, M. A. *Statute Laws of the Isle of Man.* Douglas. 1821.
- Moore, A. W. *History of the Isle of Man.* 2 vols. London. 1900.
- Morley, W. H. *Digest of all the reported cases decided in the Supreme Courts in India.* 2 vols. London. 1850.
- Munro, J. E. C. *The Constitution of Canada.* Cambridge. 1889.
- Myer, P. *Verzameling van Instructien, Ordonnancien en Reglementen voor de Regering van Nederlandsch Indië.* Batavia. 1848.
- Natal. *Statutes, 1845—1899.* 3 vols. Pietermaritzburg. 1902—1904.
- Nathan, M. *Common Law of South Africa.* 3 vols. London. 1904—1906.
- Nauta, G. *De decisien van het Hof van Frieslandt.* Leeuwarden. 1777.
- Naylor. *Manual.* Bombay. 1892.
- Neostadius, Cornelius.  
*Utriusque Hollandiæ, Zeelandiæ, Frisiæque curiæ Decisiones.* Lugduni Batavorum. 1644.  
*De pactis antenuptialibus rerum judicatarum observationes.* Arnhemii. 1657.
- Netscher, P. M. *Geschiedenis van de Kolonien Essequibo, Demerary en Berbice.* 1888.

- Newbold, T. J. *British Settlements in the Straits of Malacca*. 2 vols. London. 1839.
- New Brunswick. *Consolidated Statutes*, 1903. 2 vols. Fredericton. 1904.
- Newfoundland. *Consolidated Statutes*, 1892. St. John's. 1896.
- North-West Territories. *Consolidated Ordinances*, 1898. Regina. 1899.
- Norton-Kyshe, J. W.  
*History of the Laws and Courts of Hong Kong*. 2 vols. London. 1898.  
*Cases in the Supreme Court of the Straits Settlements, 1808—1890*.  
 4 vols. Singapore. 1890.
- Nova Scotia. *Revised Statutes*, 1900. 2 vols. Halifax. 1900.
- Ontario. *Revised Statutes*, 1897. 2 vols. Toronto. 1897.
- Orange River Colony. *Statute Law*. London. 1901.
- Ottoman Laws.  
*Corps de droit Ottoman*. Translated by George Young. 7 vols. Oxford. 1905—1906.  
*Législation Ottomane par Aristarchi Bey*. 3 vols. Constantinople. 1873—1878.  
 Mejelc, The. Translated by C. R. Tyser, D. G. Demetriades, and Ismail Haggi Effendi. Cyprus. 1901.  
 Mejelc, The, or Ottoman Civil Law. Translated by W. E. Grigsby. London. 1895.  
*Ottoman Commercial Code*. Translated by J. G. Amirayan. Cyprus. 1906.  
*Ottoman Land Code*. By F. Ongley. 1892.
- Parliamentary Papers.  
 Anglo-French Convention, 1904. Cd. 1952. 1904.  
 Bahamas. *Descriptive Report by Governor Sir J. T. Carter*. Cd. 1985. 1904.  
 British South Africa Company's Charter, 1689. C. 8773. 1898.  
 Ceylon. *Report on Government by Colonel C. H. Cameron*. No. 274. 1831—1832.  
 Channel Islands. *State of the Criminal Law Commission*. 1847—1848.  
 Colonial Conference Correspondence. Cd. 3337. 1907.  
 Jersey. *Civil, Municipal, and Ecclesiastical Laws Commission*. 1860—1861.  
 Malta. *Report of Commission of Inquiry*. No. 141. 1837.  
 Man, Isle of. *Port Petition*. No. 64. 1805.  
*Report of the Commissioners of Inquiry*, 1792. 1805.  
 Members of Parliament, 1213—1874. No. 69. 1878.  
 St. Helena. *Charter of Justice*. No. 388. 1857—1858.  
 Transvaal Constitution, 1906. Cd. 3250. 1906.  
 West Indies Commissioners' Reports. No. 157. 1825.  
 No. 577. 1828.
- Peters. *Reports of Cases in the Supreme Court of the United States*. 17 vols. Philadelphia. 1828—1843.
- Phillimore, Sir Robert. *Ecclesiastical Law*. 2nd edition. 2 vols. London. 1895.
- Piggott, Sir F. T.  
*Imperial Statutes applicable to the Colonies*. 2 vols. London. 1902—1904.  
*Exterritoriality*. London. 1892.
- Placcet-Boeck, Groot. 10 vols. 's Gravenhage. 1658—1801.
- Pollock, Sir F. *The Expansion of the Common Law*. London. 1904.
- Pollock, Sir F., and Maitland, F. W. *The History of the English Law before Edward I*. 2 vols. Cambridge. 1895.
- Prouck, J. *Animadversiones*. 1705.
- Prouse, D. W. *History of Newfoundland*. London. 1895.
- Prudhomme. *See Code Civil*.
- Quick, J., and Garran, R. R. *The Annotated Constitution of the Australian Commonwealth*. London. 1901.
- Radelandt, W. *Decisiones posthumæ curiæ provincialis Trajectinæ*. Trajecti. 1637.

- Rees, O. van. *Geschiedenis der Staathuishoudkunde in Nederland*. 1865.  
 Regiam Majestatem. Translated by Sir John Skene. Edinburgh. 1609.  
 Répertoire général alphabétique du droit Français publié par Carpentier et Frère-jouan du Saint. 86 vols. Paris. 1887—1905.  
 Revue de droit International. Paris. 1869. [In progress.]  
 Rodway, James. *History of British Guiana*. 3 vols. 1891.  
 Rules and Orders of the Supreme Court of Judicature at Fort William in Bengal, Calcutta. 1829.
- St. Lucia. *The Laws*. Oxford. 1889.  
 Sande, Joannes van den. *Rerum (decisiones) in Suprema Frisiorum Curia judicatum libri quinque*. Leovardiae. 1615.  
 Sangermano, Father. *Burmese Empire a Hundred Years Ago*. Translated by J. Jardine. London. 1893.  
 Sarbah, J. M. *Fanti Customary Laws*. London. 1897.  
 Schomaker, J. *Selecta consilia et responsa juris*. 6 vols. Nijmegen en Zutphen. 1738—1782.  
 Schorer, W. *Aanteekeningen over de Inleydinge tot de Hollandsche rechtsgeleerdheid van H. de Groot*. Middelburg. 1784.  
 Schrader, O. *Prehistoric Antiquities of the Aryan Peoples*. Translated by F. B. Jevous. London. 1890.  
 Schrassert, Joannes. *Practicae observationes*. 2 vols. Harderwijk. 1736.  
     *Consultation en advyzen*. 5 vols. Harderwijk. 1740—1754.  
     *Codex Gelro-Zutphanicus*. Harderwijk. 1740.  
 Sclopis. *Histoire de la législation Italienne*. 3 vols. Paris. 1861—1865.  
 [Joannes Naranus] *Sententien en gewezen zaken van den Hoogen en Provincialen Raad in Holland, Zeeland en West Vriesland*. Rotterdam. 1662.  
 Seychelles. *The Laws of Seychelles*. Revised. Mahé. 1904. [In progress.]  
 Shaw, John. *Charters relating to the East India Company from 1600 to 1761*. Madras. 1887.  
 Statesman's Year Book, 1906. London. 1906.  
 Statutory Rules and Orders. Revised to December 31, 1903. 14 vols. London. 1904.  
     1904—1905. London. [1905] [1906].  
 Stephen, Sir Alfred. *Constitution of the Supreme Court of New South Wales*. Sydney. 1843—1845.  
 Stephen, J. F. *A History of the Criminal Law of England*. 3 vols. London. 1883.  
 Stockmans, Petrus. *Decisiones Curiae Brabantiae*. 4 vols. Louvain. 1783.  
 Stokes, Whitley. *See Anglo-Indian Codes and India*.  
 Stowell, T. *Statutes of the Isle of Man*. Douglas. 1792.  
 Strubberg, L. C. H. *Overijsselsch Advysboek*. 4 vols. Kampen. 1784—1794.
- Tarring, C. J. *The Law relating to the Colonies*. 3rd edition. London. 1906.  
 Taylor, Pitt. *The Law of Evidence*. 10th edition. London. 1906.  
 Temple Church. *Register of Burials, 1628—1853*. London. 1905.  
 Tennant, H. *Notary's Manual*. 7th edition. Cape Town. 1902.  
 Theal, G. McC. *History of South Africa, 1625—1795*. 2 vols. London. 1897.  
 Todd, A. *Parliamentary Government in the British Colonies*. 2nd edition. London. 1894.  
 Toullier. *Le Droit Civil Français*. 15 vols. Paris. 1830—1834.  
 Transvaal. *Statute Law*. London. 1901.  
 Trinidad. *Laws, 1831—1848*. London. 1852.  
 Turkey. *See Ottoman Law*.  
 Turner, H. G. *History of the Colony of Victoria*. 2 vols. London. 1904.
- Utrechtsche Consultation. *See Consultation*.
- Valentyn. *Ond en Nieuw Oost-Indien*. 5 vols. Dordrecht-Amsterdam. 1724—1726.  
 Van Zyl, C. H. *Judicial Practice of South Africa*. 2nd edition. Cape Town. 1902.  
 Victoria. *Statutes, 1890*. 7 vols. Melbourne. 1890.  
 Viollet. *Histoire du droit civil Français*. Paris. 1893.  
 Voet, J. *Commentarius ad Pandectas*. 4 vols. Parisiis. 1829.

- Walpole, Spencer. *The Land of Home Rule*. London. 1898.
- Weber and Brestlein. *Bundesgesetz über Schuldbetreibung und Konkurs*. 2nd edition. Zürich. 1901.
- W[essels] J. W. *History of Roman-Dutch Law*. *South African Law Journal*. Grahamstown. 1908—1907.
- West, Raymond, and Bühler J. G. *A Digest of the Hindu Law*. 3rd edition. Bombay. 1884.
- Wheaton, H. *Reports of Cases in the Supreme Court of the United States*. 12 vols. Philadelphia. 1816—1827.
- Wheeler, G. J. *Confederation Law of Canada*. London [1896].
- Wilson, Sir R. K. *Anglo-Muhammadan Law*. London. 1903.
- Wood's Oriental Cases. [No copy is accessible in London.]
- Wynants, Gosarmis, de. *Supremæ Curis Brabantis Decisiones*. Bruxellis. 1744
- Zurck, E. van. *Codex Batavus*. Rotterdam. 1764.



## ABBREVIATIONS USED IN THE CITATION OF REPORTS.

---

A. C. . . . .	Appeal Cases.
Andr. . . . .	Andrews.
App. Cas. . . . .	Appeal Cases.
Australia C. L. R. . . . .	Australian Commonwealth Law Reports.
B. & S. . . . .	Best and Smith.
Beng. L. R. . . . .	Bengal Law Reports.
Bla. . . . .	Blackstone.
Bom. H. C. R. . . . .	Bombay High Court Reports.
C. B. N. S. . . . .	Common Bench, New Series.
C. M. & R. . . . .	Crompton, Meeson and Roscoe.
Cyp. L. R. . . . .	Cyprus Law Reports.
Dec. S. C. . . . .	Decisions of the Supreme Court of Mauritius.
De G. & J. . . . .	De Gex and Jones.
Ex. D. . . . .	Law Reports, Exchequer Division.
Hagg. C. R. . . . .	Haggard Consistory Reports.
H. L. C. . . . .	House of Lords Cases.
I. L. R. Bom. . . . .	Indian Law Reports, Bombay.
I. L. R. Calc. . . . .	Indian Law Reports, Calcutta.
I. L. R. Mad. . . . .	Indian Law Reports, Madras.
James N. S. Rep. . . . .	James's Nova Scotia Reports.
Kerr N. B. . . . .	Kerr's New Brunswick.
L. J. Q. B. . . . .	Law Journal, Queen's Bench.
L. R. C. P. . . . .	Law Reports, Common Pleas.
L. R. Ind. App. . . . .	Law Reports, Indian Appeals.
L. R. P. C. . . . .	Law Reports, Privy Council.
L. R. Q. B. . . . .	Law Reports, Queen's Bench.
L. R. Sc. App. . . . .	Law Reports, Scotch Appeals.
L. T. . . . .	Law Times.
M. & Rob. . . . .	Moody and Robinson.
Mad. H. C. R. . . . .	Madras High Court Reports.
Mer. . . . .	Merivale.
Mod. . . . .	Modern.
Moo. Ind. Ap. Ca. . . . .	Moore's Indian Appeal Cases.
Moo. P. C. . . . .	Moore's Privy Council Cases.
N. L. R. . . . .	Ceylon New Law Reports.
P. D. . . . .	Probate Division.
Perry Or. Ca. . . . .	Perry's Oriental Cases.
Q. B. . . . .	Queen's Bench, Adolphus and Ellis, N. S.
R. J. Q. B. . . . .	Rapports Judiciaires, Quebec, Queen's Bench.
Rob. Adm. Rep. . . . .	Robinson's Admiralty Reports.
Smith, L. C. . . . .	Smith's Leading Cases.
St. Tri. . . . .	State Trials.
T. L. R. . . . .	Times Law Reports.
T. S. . . . .	Transvaal Supreme Court.
V. L. R. . . . .	Victoria Law Reports.
Ves. Sen. . . . .	Vesey Senior.
W. & W., I. E. & M. . . . .	Wyatt and Webb, Insolvency, Ecclesiastical and Matrimonial, Victoria.
Y. & C. C. C. . . . .	Younge and Collyer, Chancery Cases.

# TABLE OF CASES.

	PAGE
ABRAHAM <i>v.</i> Abraham (1863), 9 Moo. Ind. Ap. Ca. 195 . . . . .	60
Advocate-General of Bengal <i>v.</i> Ranees Surnomoye Dossee (1863), 9 Moo. Ind. Ap. Ca. 387 . . . . .	7
Ahmedbhoy <i>v.</i> Vulleebhoy (1882), I. L. R. 6 Bom. 703 . . . . .	176
Alliance Contracting Co., Ltd. <i>v.</i> Russell (1898), 23 V. L. R. 545 . . . . .	367
Ambabai <i>v.</i> Govind (1898), I. L. R. 23 Bom. 257 . . . . .	54
Anusuyabai <i>v.</i> Sakharam (1883), I. L. R. 7 Bom. 464 . . . . .	177
Att.-Gen. <i>v.</i> Baillie (1842), 1 Kerr N. B. 443 . . . . .	221
— <i>v.</i> Stewart (1817), 2 Mer. 143 . . . . .	253
— of British Columbia <i>v.</i> Att.-Gen. of Canada, [1906] A. C. 552 . . . . .	218
— for British Honduras <i>v.</i> Bristowe (1880), 6 A. C. 143 . . . . .	243
— of Canada <i>v.</i> Atts.-Gen. for Ontario, Quebec and Nova Scotia (Fisheries Case), [1898] A. C. 700 . . . . .	215
— of Isle of Man <i>v.</i> Cowley (1858—1859), 12 Moo. P. C. 27 . . . . .	130
— <i>v.</i> Mylchreest (1879), 4 App. Cas. 294 . . . . .	393
— for Jersey <i>v.</i> Le Moignan, [1892] A. C. 402 . . . . .	134
— <i>r.</i> Solicitor-Gen. for Jersey, [1893] A. C. 326 . . . . .	134
— for Nova Scotia <i>v.</i> Gregory (1886), 11 App. Cas. 229 . . . . .	379
— for Trinidad and Tobago <i>r.</i> Eriché, [1893] A. C. 518 . . . . .	250
BAHABHAT <i>v.</i> Narharbhat (1888), I. L. R. 13 Bom. 224 . . . . .	177
Bahama Islands, In re, [1893] A. C. 138 . . . . .	238
Bai Baji <i>v.</i> Bai Santok (1894), I. L. R. 20 Bom. 53 . . . . .	62
Barlowe <i>v.</i> Orde (1870), 13 Moo. Ind Ap. Ca. 277 . . . . .	61, 63
Barrs <i>v.</i> Jackson (1842) 1 Y. & C. C. C. 585; (1845) 1 Phillips, 582 . . . . .	176
Beaumont <i>v.</i> Barrett (1836), 1 Moo. P. C. 59 . . . . .	x, 245
Beau Plan Sugar Estates Co. <i>v.</i> Pamplémousses Sugar Estates Co. (1884), Dec. S. C. (1884), 9 . . . . .	205
Benatar <i>v.</i> Smith (1812), 3 Knapp 143, <i>n.</i> . . . . .	143
Bhan Nanaji Utpat <i>v.</i> Sundrabai (1874), 11 Bom. H. C. R. 249 . . . . .	52
Bishop of Sodor and Man <i>v.</i> Earl of Derby (1751), 2 Ves. sen. 337 . . . . .	128, 129, 132
Blakemore <i>v.</i> Glamorganshire Canal Co. (1835), 2 C. M. & R. 133 . . . . .	177
Bowerbank <i>v.</i> Bishop of Jamaica (1838), 2 Moo. P. C. 449 . . . . .	xi
Brown, In re (1864), 5 B. & S. 230; 33 L. J. Q. B. 193 . . . . .	129
CAIN <i>v.</i> Cain (1838), 2 Moo. P. C. 222 . . . . .	x, 129
Callender, Sykes & Co. <i>v.</i> Colonial Secretary of Lagos, [1891] A. C. 460 . . . . .	270
Cambridge, In re (1841), 3 Moo. P. C. 175 . . . . .	228, 381
Campbell <i>v.</i> Hall (1774), 20 St. Tri. 239 . . . . .	126
Cape Breton Island, In re (1846), 5 Moo. P. C. 259 . . . . .	381
Chanter <i>v.</i> Blackwood (1904), 1 Australia C. L. R. 39 . . . . .	8
Choah Choon Nioh <i>v.</i> Spottiswoode (1869), Wood's Oriental Cases; 1 Norton-Kyshe's Straits Settlements Report. 216 . . . . .	194, 196
Christian <i>v.</i> Corren (1716), 1 P. Wms. 329 . . . . .	393
Citizens' Insurance Co. <i>v.</i> Parsons (1881), 7 A. C. 96 . . . . .	215
Clergue <i>v.</i> Murray, [1903] A. C. 521 . . . . .	216
Cleve <i>v.</i> Powel (1832), 1 M. & Rob. 228 . . . . .	176
Collector of Madura <i>v.</i> Moottoo Ramalinga (1868), 12 Moo. Ind. Ap. Ca. 397 . . . . .	54
Colonial Bank <i>v.</i> Warden (1846), 5 Moo. P. C. 340 . . . . .	248
Colonial Government <i>v.</i> Laborde and Others (1902), Dec. S. C. (1902), 40 . . . . .	200, 201
Colonial Sugar Refining Co. <i>v.</i> Irving, [1905] A. C. 369 . . . . .	290, 292, 293, 295, 366
Commercial Bank of Australia <i>r.</i> McCaskill (1897), 23 V. L. R. 343 . . . . .	367
Commissioners for Compensation under the Act for the Abolition of Slavery, Case of (1835), 3 Knapp. 155 . . . . .	x
Cook <i>v.</i> Sprigg (1899), 15 T. L. R. 515; [1899] A. C. 572 . . . . .	382

	PAGE
Cosnahan v. Grice (1862), 15 Moo. P. C. 215 . . . . .	132
Cottingham v. Earl of Shrewsbury (1843), 3 Hare 627 . . . . .	177
Crawford, In re (1849), 13 Q. B. 613; 7 St. Tri. (N.S.) 961 . . . . .	139
Currie v. McKnight, [1897] A. C. 97 . . . . .	9
Cushing v. Dupuy (1880), 5 App. Cas. 409 . . . . .	216
DAILY TELEGRAPH NEWSPAPER Co. v. McLaughlin, [1904] A. C. 777 . . . . .	284
D'Allain v. Le Breton (1857), 11 Moo. P. C. 64 . . . . .	137
Davison v. Farmer (1851), 6 Exch. 242; 20 L. J. Ex. 177 . . . . .	129
Denyssen v. Mostert (1872), L. R. 4 P. C. 236 . . . . .	303
Dean of Jersey v. Rector of — (1840), 3 Moo. P. C. 229 . . . . .	138
Dillet (A. M.), In re (1887), L. R. 12 App. Cas. 459 . . . . .	184, 358
Dodd's Case (1858), 2 De G. & J. 520 . . . . .	137
Dona Clara v. Dona Maria (1822), Ramanathan's Ceylon Reports (1820—1833), 33 . . . . .	112
Du Boulay v. Du Boulay (1869), L. R. 2 P. C. 430 . . . . .	255
Duchess of Kingston's Case, 2 Smith L. C. 731 . . . . .	175
Dyson v. Godfray (1884), 9 A. C. 726 . . . . .	133
EARL OF DERBY v. Duke of Atholl (1748—9), 1 Ves. sen. 202 . . . . .	128, 132
East Rand Deep, Ltd. v. Louis Joel, [1903] T. S. 703 . . . . .	313
Ellis v. M'Henry (1871), L. R. 6 C. P. 228 . . . . .	176
Esnouf v. Att.-Gen. for Jersey (1883), 8 A. C. 304; 48 L. T. 321 . . . . .	137, 394
Ex parte Carew, [1897] A. C. 719 . . . . .	358
FALKLAND ISLANDS Co. v. Reg. (1863), 1 Moo. P. C. (N.S.) 299 . . . . .	277
— v. — (1864), 2 Moo. P. C. (N.S.) 266 . . . . .	277
Falle v. Godfray (1888), 14 A. C. 70 . . . . .	136
Freeman v. Fairlie (1828), 1 Moo. Ind. Ap. Ca. 305 . . . . .	7
Frith v. Frith, [1906] A. C. 254 . . . . .	246
GAHAN v. Lafitte (1842), 3 Moo. P. C. 388 . . . . .	x, 255
Gera v. Ciantar (1837), 12 A. C. 557 . . . . .	147, 148
Gillett v. Lumsden, [1905] A. C. 601 . . . . .	226
Girdlestone v. Brighton Aquarium Co. (1879), 4 Ex. D. 107 . . . . .	176
Godfray v. Constables of the Island of Sark, [1902] A. C. 534 . . . . .	142
Golap Chand v. Thakurani (1878), I. L. R. 3 Calc. 314 . . . . .	175
Grieve v. Tasker, [1906] A. C. 132 . . . . .	357
Guernsey, In re, Bailiff, &c., of (1844), 5 Moo. P. C. 49; 6 St. Tri. (N.S.) 159 . . . . .	xii, 141
HAGGARD v. Pelicier, [1892] A. C. 61 . . . . .	207
Hasam Ibrahim v. Mancharam Kaliandas (1873), I. L. R. 3 Bom. 137 . . . . .	176
Hemchand Devchand v. Azam Sakarlal (1905), L. R. 33 Ind. App. Cas. 1 . . . . .	156, 169, 391
Hirbae v. Sonabae (1847), Perry Or. Ca. 110 . . . . .	62
Hitchin v. Campbell (1771), 2 Bla. 827 . . . . .	176
Hodge v. Att.-Gen. for British Honduras (1864), 2 Moo. P. C. (N.S.) 325 . . . . .	243
IMPERATRIX v. Ratnya (1897), I. L. R. 25 Bom. 667 . . . . .	399
Indian Chief (1801), 3 Rob. Adm. Rep. 12 . . . . .	7
Invermay, The v. The San Giovanni Batista (1895), 3 Cyp. L. R. 80 . . . . .	152
JANVRIN v. De la Mare (1861), 14 Moo. P. C. 334 . . . . .	135
Jenkins v. Robertson (1867), L. R. 1 Sc. App. 117 . . . . .	177
Jersey, In re Bar of (1859), 13 Moo. P. C. 263 . . . . .	137
— (Dean of) v. Rector of — (1840), 3 Moo. P. C. 229 . . . . .	138
— In re States of (1853), 11 Moo. P. C. 320 . . . . .	135
— In re States of (1853), 9 Moo. P. C. 185; 8 St. Tri. (N.S.) 285 . . . . .	135, 137
— In re States of (1862), 15 Moo. P. C. 195 . . . . .	136
Jephson v. Riera (1835), 3 Knapp. 130; 3 St. Tri. (N.S.) 591 . . . . .	143
Jex v. McKinney (1889), 14 A. C. 77 . . . . .	127, 243
Jogendro v. Funindro (1871), 14 Moo. Ind. Ap. Ca. 367 . . . . .	177
Johnson v. Regem (1904), 73 L. J. P. C. 113 . . . . .	273
Johnston v. Minister, &c. of St. Andrew's Church (1877), 3 App. Cas. 159 . . . . .	215, 379
Jowala Buksh v. Dharum Singh (1866), 10 Moo. Ind. Ap. Ca. 511 . . . . .	61

## TABLE OF CASES.

XXXV

	PAGE
Justices of the Supreme Court of Bombay, <i>In re</i> (1829), 1 Knapp 1	168
KARONCHIHAMY v. Angohamy (1904), 8 Ceylon New Law Reports, Pt. I., p. 1	111
Kennedy v. Purcell (1888), 59 L. T. 279	216
Koowur Nitrasur v. Nund Loll (1860), 8 Moo. Ind. Ap. Ca. 199	174
Krishna Behari Roy v. Brojeswari Chowdrani (1875), L. R. 2 Ind. App. 283	176
LA CLOCHE v. La Cloche (1870), L. R. 3 P. C. 125	133, 134, 136, 137
— v. — (1872), L. R. 4 P. C. 325	18, 132, 134
Lalla Bunseedhur v. Bengal Government (1871), 14 Moo. Ind. Ap. Ca. 86	174
Langmead v. Maple (1865), 18 C. B. (N.S.) 255	176, 177
Lastings v. Gonsalves (1899), 1 L. R. 23 Bom. 539	61
Larios v. Bonany Y Gurety (1873), L. R. 5 P. C. 346	145
Lauderdale Peerage, The (1885), 10 A. C. 692	127
Le Gallais v. De Veulle (1833), 11 Moo. P. C. 72 n.	137
Lekraj Kuar v. Mahpal Singh (1879), L. R. 7 Ind. App. 63	63
Le Mesurier v. Le Mesurier, [1895] App. Cas. 517; 72 L. T. 873	188
Le Sueur v. Le Sueur (1876), 1 P. D. 139	138
Liquidators of Maritime Bank v. Receiver-Gen. of N. Brunswick, [1892] A. C. 437	215, 379
Locke v. Norborne (1691), 3 Mod. 141	176
Lubeck, <i>In re</i> (1905), L. R. 32 Ind. App. 217	160, 391
MAHARAJAH OF JEYPORE v. Papayamma (1900), 1 L. R. 23 Mad. 329	396
Manning's Case (1839), 3 Moo. P. C. 154	xi
Martyn v. McCulloch (1837), 1 Moo. P. C. 308	142, 589
Mathura Naikin v. Esu Naikin (1880), 1 L. R. 4 Bom. 545	53
Mayor, &c. of Canterbury v. Wyburn, [1895] A. C. 89	127
Mayor of Lyons v. East India Company (1836), 1 Moo. Ind. Ap. Ca. 175	7
McDermott v. British Guiana (Judges of) (1868), L. R. 2 P. C. 311	241
McDonald v. Belcher, [1904] A. C. 429	234
Mighell v. Johore (Sultan of), [1894] 1 Q. B. 149	199
Minister for Lands v. Wilson, [1901] A. C. 315	290
Misir Raghebardial v. Sheo Baksh Singh (1882), 1 L. R. 9 Calc. 439	176, 177
Mohidin v. Muhammad (1863), 1 Mad. H. C. R. 245	177
Monckton, <i>In re</i> (1837), 1 Moo. P. C. 455	x, 381
Moran et al. v. Mittu Bibee et al. (1876), 1 L. R. 2 Calc. 228	179
Muhammad Yusuf-ud-din v. Queen Empress (1897), L. R. 24 Ind. App. 137	158
Muir, <i>In re</i> (1839), 3 Moo. P. C. 150	xi
Mungal Pershad v. Gria Kant (1881), L. R. 8 Ind. App. 123	176
Municipal Officer, Aden v. Hajee Ismail et al. (1905), L. R. 33 Ind. App. 38	360
Munjanath v. Venkatesh (1881), 1 L. R. 6 Bom. 54	176
NARANJI BHIKABHAI v. Dipa Umed (1878), 1 L. R. 3 Bom. 3	176
Neo v. Neo (1875), L. R. 6 P. C. 381	194, 195, 196
Nimba v. Sitaram (1885), 1 L. R. 9 Bom. 458	176
PARAPANO v. Happaz, [1894] A. C. 165	150, 384
Parkin and Cowper v. James (1905), 2 Australia C. L. R. 315	233
Parthasaradi v. Chinnakrishna (1832), 1 L. R. 5 Mad. 304	176
Pearson v. Russell (1839), 15 V. L. R. 89	367
Pertab Chunder v. Mohendra et al. (1889), L. R. 16 Ind. App. 233	178
Phillips v. Eyre (1870), L. R. 6 Q. B. 1	245
Ponnusami v. Dorasami (1880), 1 L. R. 2 Mad. 209	61
Prince v. Gagnon (1832), 8 App. Cas. 103	216
Procureur General v. Newton (1903), Dec. S. C. (1903), 26	206
Puthatampy v. Mailvo Kanam (1897), 3 N. L. R. 42	187
QUAN YICK v. Hinds (1905), 2 Australia C. L. R. 345	127, 230
Queen Empress v. Abdul Latib (1885), 1 L. R. 10 Bom. 186	161
— v. Mangal Tekchand (1885), 1 L. R. 10 Bom. 258, 263, 274	362
— v. Sarya (1890), 1 L. R. 15 Bom. 505	399
RAINY v. Bravo (1872), L. R. 4 P. C. 287	273
Ramasami v. Virasami (1867) 3 Mad. H. C. R. 272	176
Ramchandra v. Narayan (1886), 1 L. R. 11 Bom. 216	177

	PAGE
Ram Kirpal v. Rup Kuari (1883), L. R. 11 Ind. Ap. 37 . . . . .	176
Rani Lekraj Kuar v. Mahpal Singh (1879), L. R. 7 Ind. Ap. 63 . . . . .	63
Ravana Mana Chena Allagappa Chitta v. Tunku Allum Bin Sultan Allie Iskander Shah (1883), 8 A. C. 751 . . . . .	199
R. v. Bertrand (1867), L. R. 1 P. C. 520 . . . . .	181
— v. Hebden (1738), Andr. 389 . . . . .	176
— v. Jameson, [1896] 2 Q. B. 425 . . . . .	306, 372
— v. Spilsbury (1898), 79 L. T. 211 . . . . .	147, 331, 400
Retemeyer v. Obermuller (1836), 2 Moo. P. C. 93 . . . . .	x
Richelieu and Ontario Navigation Co. v. Owners of Steamship Cape Breton, [1907] A. C. 112 . . . . .	216
Richer & Co. v. Oriental Bank Corporation (1881), Dec. S. C. (1881), 30 . . . . .	205
Riel v. The Queen (1885), L. R. 10 Ap. Ca. 675 . . . . .	184
Rolfe, Ex parte (1863), 2 W. & W. I. E. & M. 51 . . . . .	367
Rooth v. State (1883), 2 Kotze Rep. 1881—88, 259 . . . . .	311
Ruding v. Smith (1821), 2 Hagg. C. R. 371; 1 St. Tri. (N.S.) 1053 . . . . .	126
Rutheputty v. Rajunder (1839), 2 Moo. Ind. Ap. Ca. 132 . . . . .	54
SABAPATHI v. Svapra Kasam (1904), 8 N. L. R. 62 . . . . .	187
Sayers v. Whitfield (1829), 1 Knapp 133 . . . . .	ix
Scott v. H. M. Att.-Gen. (1886), 11 P. D. 128 . . . . .	303
Seaville v. Colley (1891), 9 Juta 99 . . . . .	303
Secretary of State for India v. Kamachee Boye Sahaba (1859), 7 Moo. Ind. Ap. Ca. 476 . . . . .	169
Shedden v. Patrick (1854), 1 Macqueen 535 . . . . .	176
Soorendronath Roy v. Mussamut Heeramonee Burmoneah (1868), 12 Moo. Ind. Ap. Ca. 81 . . . . .	54
Sooromonee Dayee v. Suddanund Mohapatter (1873), 12 Beng. L. R. 304 . . . . .	175
Spilsbury v. Reg., [1899] A. C. 392 . . . . .	147, 331, 400
St. Louis v. St. Louis (1841), 3 Moo. P. C. 398 . . . . .	x
Stewart and Simpson v. Molson's Bank (1894), R. J. Q. 4 Q. B. 11 . . . . .	230
Symes v. Cu villier (1880), 5 A. C. 138 . . . . .	230
THÉBERGE v. Landry (1876), 2 App. Cas. 102 . . . . .	215
Thornton v. Robin (1837), 1 Moo. P. C. 439 . . . . .	132
Touzel v. Filleul (1841), 3 Moo. P. C. 484 . . . . .	x
Triccan Panachand v. Bombay, Baroda, and Central India Ry. Co. (1885), I. L. R. 9 Bom. 244 . . . . .	160
UNIACHE v. Dickson (1848), James N. S. Rep. 287 . . . . .	224
VALIN v. Langlois (1879), 41 L. T. 662 . . . . .	215, 379
Van Breda v. Silberbauer (1869), 6 Moo. P. C. N. S. 319 . . . . .	382
Van Cleef's Case (1773), Van der Straaten's Reports, 1869—1871, App. A. p. xxvii. . . . .	110
Vasudevan v. Secretary of State (1884), I. L. R. 11 Mad. 157 . . . . .	54
Vathiar of Nazareth, The Case of (1872), 7 Mad. H. C. R. 121 . . . . .	61
Venku v. Mahalinga (1888), I. L. R. 11 Mad. 393 . . . . .	53
Victoria Railway Commissioners v. Brown, [1906] A. C. 381 . . . . .	284, 366
WEBB v. Outrim, [1907] A. C. 81 . . . . .	263, 287
Wheaton v. Peters (1834), 3 Peters 591 . . . . .	38
Whicker v. Hume (1858) 7 H. L. C. 124 . . . . .	127
Wolfendahl Church Case (1873), Grenier's Ceylon Reports, Pt. III., 84 . . . . .	111
YEOURGH v. Eleftheriou (1894), 3 Cyp. L. R. 35 . . . . .	153

## ADDENDA AND ERRATA.

- Page 1.—Note (b), for "39" read "40."  
 „ 3.—Line 18, for "thirty" read "twenty."  
 „ 3.—Note (g), for "J. 5" read "J. 1."  
 „ 14.—Note (y), for "Chapter I." read "Chapters IV., VI., VIII."  
 „ 14.—Note (z), omit "Fuzier Herman."  
 „ 16.—Note (d), for "Fuzier Herman" read "Rép. Gén."  
 „ 22.—Note (z), for "arrêtés" read "arrêts."  
 „ 34.—Note (c), for "40" read "41."  
 „ 38.—Note (t), for "52a" read "52."  
 „ 44.—Note (i), for "27 & 28 Vict." read "28 & 29 Vict."  
 „ 54.—Note (u), for "Sovrendronath" read "Soorendronath," and for  
     "Mursumut" read "Mussamut."  
 „ 61.—Note (j), for "Darasami" read "Dorasami."  
 „ 81.—Line 9, for "(2)" read "(2) (b)."  
 „ 126.—Note (c), insert "at p. 323."  
 „ 147.—Note (d), for "1888" read "1889."  
 „ 149.—Note (z), for "Orders" read "Order."  
 „ 150.—Note (c), for "Orders" read "Order."  
 „ 150.—Note (e), for "N. S. i. (1900)" read "N. S. ii. (1900)."  
 „ 156.—Note (b), for "27 & 28 Vict." read "28 & 29 Vict."  
 „ 175.—Note (c), for "813, 514," read "731," and for "Soojomanee" read  
     "Soorjomanee," and "Mohaputter" read "Mohapatter."  
 „ 186.—Line 16, for "October" read "April."  
 „ 190.—Note (c), for "1899" read "1893."  
 „ 193.—Note (u), for "194" read "198," and for "319" read "350."  
 „ 196.—Note (z), for "No. 3" read "No. 2."  
 „ 198.—Note (q), for "349" read "350," and for "374" read "376."  
 „ 208.—Note (q), for "Jurisdiction" read "Judicature."  
 „ 212.—Note (u), add after "c." "6."  
 „ 218.—Note (c), add after "1856" "and Order in Council, 12th July, 1887."  
 „ 220.—Note (b), add after "March 16th" "and November 26th."  
 „ 222.—Note (h), add at end, "(Can.)."  
 „ 224.—Note (c), for "257" read "287."  
 „ 228.—Note (c), for "II." read "III."  
 „ 228.—Note (p), for "455" read "175."  
 „ 233.—Note (p), add "(Can.)."  
 „ 233.—Note (q), for "s. 14" read "s. 16," and for "19" read "c. 19."  
 „ 234.—Note (a), for "s. 9" read "s. 7."  
 „ 243.—Line 6, for "Paris" read "Versailles," and for "1763" read "1783."  
 „ 243.—Note (y), for "ii." read "i."  
 „ 249.—Note (i), for "30th" read "20th."  
 „ 253.—Headline, for "Granada" read "Grenada."  
 „ 255.—Note (n), for "7" read "27"; add "26 & 27 Vict. c. 24; 30 & 31  
     Vict. c. 45; 53 & 54 Vict. c. 27; No. 93 of Rev. Laws, 1889, s. 6."

B.C.L.

d

Page 256.—Note (s), *add at end*, "An appeal also lies direct to the Privy Council in cases over 500*l.*, on the conditions of the (British Guiana) Order in Council of 20th June, 1831: Safford & Wheesier, 'Privy Council Practice,' 440."

„ 269.—Line 7, *for* "Southern Nigeria" *read* "Southern Nigeria."

„ 274.—Line 7, *for* "March 1st" *read* "February 26th."

„ 283.—Note (a), *add at end*, "s. 71."

„ 283.—Note (e), *for* "1907, J. & C. 81," *read* "1907, A. C. 81."

„ 293.—Note (a), *for* "351" *read* "353."

„ 303.—Note (e), *for* "366" *read* "368."

„ 328.—Note (l), *for* "39" *read* "40."

„ 338.—Note (h), *for* "333" *read* "334."

„ 346.—**Persian Coast and Islands.** Jurisdiction is now regulated by Order in Council dated May 7th, 1907; see *London Gazette*, p. 3178.

„ 370.—**Bombay.** *Transfer* "appellate jurisdiction" *before* "His Majesty's Court at Zanzibar," *and add* "and" *after* "Zanzibar."

„ 382.—*Cook v. Sprigg*, *for* "(1899)" *read* "[1899]."

# COLONIAL AND FOREIGN LAW.

---

## PART I.

---

### INTRODUCTION.

**Legal Changes since issue of First Edition.**—Since the publication, in 1838, of the first edition of Burge's "Commentaries," legal changes of the most far-reaching character have passed over the British Empire and the world. Within the Empire itself, we have had the transfer to the Crown of the government of British India, and of all rights incidental thereto which had previously been exercised by the East India Company in trust for the Crown, the growth of the self-governing Colonies, the federation of Canada and Australia, and an enormous extension of extraterritorial jurisdiction, and of the system of protectorates. Beyond the limits of the United Kingdom, steady progress has been made with the codification, and assimilation, of the laws of different parts of the Empire, and, even in territories where the time for codification is not yet come, the work of consolidation has been going on unceasingly (*a*).

On the Continent of Europe, and in North and South America, Asia and Africa, codification has achieved triumphant victories. Austria, Italy, Holland, Greece, Roumania, Germany, Portugal, Spain, Japan, Chili, Mexico, some of the United States, and an ever-increasing body of other Powers, have followed in the footsteps of the authors of the Napoleonic Codes (*b*).

**Private International Law.**—The period (nearly seventy years) which has elapsed since the first edition of this book, and more

(*a*) *E.g.*, in Quebec, St. Lucia, etc.      existence before these, *e.g.*, in Spain

(*b*) Codes of Law were, however, in      and Germany, see pp. 28, 39.



especially the last decade, has also witnessed a continuously widening conception of the principles of Private International Law. These are now generally grouped under three heads, distinct but at the same time interdependent, ( $\alpha$ ) rules of nationality, ( $\beta$ ) rights and duties of aliens, ( $\gamma$ ) the choice of the proper law to apply to questions which admit of the application of two or more national laws. The increasing study of this subject has gone hand in hand with a marked tendency of the various municipal systems of law to assimilate themselves to each other, due in the first place to the promulgation of codes following the same main principles; and in the last few years this double movement has been directly accelerated by international treaties, municipal legislation, conferences of jurists and commercial experts, and an increasing volume of judicial decisions and juristic literature dealing specially with the subject.

**International Treaties.**—The part which each of these different factors has taken in this connection can only be indicated here in the most general outline. Official international action for obtaining uniformity in Private International Law may be conveniently dated from 1874, when the Government of Holland proposed an international Conference for regulating the legal conditions of reciprocal execution of judgments. The proposal was sympathetically received but was not carried into effect. In 1881 the Italian Government by its Foreign Minister Mancini proposed to the other Powers to meet in conference with a view to establishing certain rules of Private International Law, especially in connection with the execution of foreign judgments. Lord Granville, then at the head of the British Foreign Office, in accepting the invitation, specified, as possible subjects of international agreement, nationality, mixed marriages, domicile, succession, and execution of foreign judgments. The Conference was arranged to take place in Rome in 1884 between representatives of twenty-two States, but an outbreak of cholera in Italy caused its postponement and ultimately its abandonment. In 1878 representatives of Argentine, Bolivia, Chili, Costa Rica, Ecuador, Peru and Venezuela met in conference at Lima, and drafted a treaty dealing with international civil and criminal law and procedure. In 1888 and 1889, an official conference of representatives of several South American States was held at Monte Video, the outcome of which was that a series of treaties dealing with civil and criminal international law were prepared

between Argentine, Brazil, Chili, Peru, Paraguay and Uruguay, but with one exception (copyright between Uruguay and Argentine only) they were not carried into effect (c). In 1889 a Pan-American Conference was held at Washington at which a section of International Law was charged with the task of submitting uniform rules of Private International Law in civil and commercial law and for the legalisation of documents. In the same year an official conference of jurists and maritime experts, representative of all the maritime States, held in the same city, drew up the present Regulations for Collisions at Sea. In 1900 an unofficial congress of jurists, representative of Spain and fifteen Central and Southern American States, met in Madrid and adopted resolutions following the lines of those passed at Monte Video, which the Spanish Government declared in 1901 would form the basis of negotiations between Spain and those countries for commercial arrangements (d).

**Hague Conferences.**—But in 1898 the Dutch Government took the most important step yet made in this direction by reviving the project which they had themselves suggested nearly thirty years before, of holding international Conferences for considering the possibility of adopting uniform international rules regarding the status and capacity of persons, and family rights such as marriage, separation and divorce, legitimate and illegitimate filiation, adoption, parental power, guardianship, interdiction, succession and testaments (e). Official Conferences attended by legal representatives of the chief Continental States have been held for this purpose, in 1898, 1894, 1900 and 1904; and these have had considerable practical results. In 1896 a treaty was adopted between Belgium, Holland, France, Russia, Germany, Italy, Luxemburg, Sweden, Spain, Greece, and Switzerland for the application of uniform rules regarding certain matters of legal procedure. In 1902 general treaties were concluded between the same States establishing rules to regulate conflicts of law in marriage, divorce and separation, and guardianship of minors respectively which had been adopted at the Conference of 1900 (f). At the Conference of 1904 *projets*

(c) Meili, 14, 15; Clunet (1896), J. 440, 699; (1897) J. 895; "Revue de Droit Int.," Pradier Fodéré (1889), xxi, 217, 561.

(d) "Law Mag. & Rev." (1902), xxviii., 472.

(e) Martens, "Recueil de Traités," xix., 424.

(f) Clunet (1895), J. 465; Martens, xxi., 113. "Revue de Droit Int." (1902), 485, Asser.

or draft treaties establishing similar general rules as regards successions and testaments, the personal and proprietary *régimes* of married persons, interdiction and bankruptcy were adopted for submission to the Governments represented (*g*). Great Britain refused an invitation to attend these Conferences on the ground of the peculiar nature of her laws, and the United States have similarly taken no part in them.

In 1905 an official Conference attended by jurists representative of France, Holland, Belgium, the United States, Italy, Norway, Sweden, Russia, Spain and Japan, was held at Brussels for considering draft treaties dealing with certain questions of maritime law, namely, collision and salvage. The British Government was represented at the later sittings of the Conference. Official Conferences have also resulted in the conclusion of Conventions dealing with such questions as copyright (Berne, 1885), and industrial property, patents, designs and trademarks (Paris, 1883).

**Municipal Legislation.**—As instances of legislation directly affecting the question of conflicting laws, there may be cited the provisions in the foreign codes, such as those of the Code Civil, the introductory articles of the Italian Civil Code, and the introductory law of the German Civil Code of 1900; and for the British Empire, the Act of 1861, regulating wills of personalty made by British subjects, the Foreign Law Ascertainment Act of the same year, the provisions of the Merchant Shipping Act regarding the proper law to govern ships, the Judgments Extension Acts of 1868 and 1882, and the Inter-Colonial Probate Acts.

**Conferences of Jurists.**—Much of the development of the subject is also due to the frequent unofficial Conferences of jurists and their suggestions for international agreement. The Institute of International Law founded at Ghent in 1873, and composed of eminent lawyers, who meet in conference at intervals in each country in turn, has been the author of resolutions, projects and codes covering much of the ground of this province of law, such as nationality, capacity, succession (1880, 1896, 1897), marriage and divorce (1887 and 1888), guardianship of minors (1891), and the question of “*renvoi*” (*h*). A body of contemporary origin, the Interna-

(*g*) Martens, xxxi., 706; Clunet (1901), J. 1; (1902), J. 949; “*Revue de Droit Int.*” (1904), 516, Asser.

(*h*) See “*Tableau Général*” of the Institute (1893), and “*Tableau Décennal*” (1904).

tional Law Association, has convened over twenty Conferences mainly dealing with questions of maritime and commercial law, and has formulated the York-Antwerp Rules of General Average (Antwerp, 1877, Liverpool, 1890), the London Rules of Affreightment, 1893, and the Glasgow Rules of Marine Insurance, 1901. Another body formed in Belgium in 1896 with the object of promoting unification of maritime law, the International Maritime Committee, has achieved remarkable success in this direction, and has prepared draft treaties dealing with several branches of the subject, notably collision and salvage, which were considered at the official Conference at Brussels in 1905 mentioned above.

**Decisions of the Courts.**—But the most important, because the most continuous, contribution made to the development of the subject has come from the Courts of the principal States, such as those of France, Germany, Italy, Belgium, to mention no other foreign tribunals, and our own. The same general principles are becoming recognised everywhere and applied on identical lines; and the prevailing tendency may be said to favour a system which would place the foreigner on an equality with the citizen of the “forum,” and modify the application of municipal law to foreigners where it is required by the general rules governing the subject.

**Literature.**—The literature dealing with Private International Law has grown to considerable proportions, and British lawyers have contributed their share to the fabric of the science, but generally they have been content to state the theories adopted by the English Courts, without investigating how they compare with foreign decisions and opinions. The main lines on which the investigation of the proper law to govern the relations between citizens and foreigners or between foreigners only has proceeded in recent times are indicated in a later volume.

**Scope of Volume.**—In view of such developments as those above mentioned it has been found impossible to preserve the substance of the preliminary treatise on the systems of jurisprudence prevailing in the various colonies, with which the original edition of Burge’s “Commentaries” commenced. That edition, moreover, took no account of British India, nor of the Native States under the suzerainty of the Crown in India.

In this volume an attempt is made, first, to describe generally the character of the different systems that underlie the jurisprudence of the legal world, and their relations to the present laws of the British dominions; and, secondly, to trace the outlines of the existing juridical constitutions of those dominions, exclusive of the United Kingdom, and also to consider the position of tribunals which have been established in lands not forming an integral part of His Majesty's Dominions in the exercise of exterritorial jurisdiction or otherwise. Finally, a tabulated statement is appended, showing the conditions of appeal to the Judicial Committee of the Privy Council from British Courts of Justice in all places in the King's Dominions beyond the United Kingdom, and also in places, not included therein, where powers and jurisdiction have been acquired by the Crown, whether by treaty, grant, usage, sufferance, or other lawful means, and are regulated under the Foreign Jurisdiction Act, or otherwise.

## CHAPTER I.

### DIFFERENT SYSTEMS OF LAW UNDERLYING THE JURISPRUDENCE OF THE LEGAL WORLD.

THE main systems of law underlying the jurisprudence of the legal world are the common law, the canon law, and the civil law.

**The Common Law.**—The common law, though it cannot claim the title of a formulated system, requires first notice in an account of the laws of the British dominions, as it is the foundation of the law of the English-speaking peoples. Its importance is due to the extent of their geographical distribution and the increase in their numbers. From England it has passed to the British settlements in America and elsewhere, including British India, with the changes necessary to its new environments, in many cases tacitly as part of the laws which the settlers took with them, but sometimes by Royal Charter or by express enactment.

The common law of England has been declared in an Act of the Legislature of the Bahamas to be "the best birthright of Englishmen and their descendants," and the principle is accepted that, "go where he will," an Englishman carries with him, as a part of his personal law, as much of law and liberty "as the nature of things will bear" (*i*). The extent to which in "the nature of things" this principle was applicable to the early English settlers in India has been explained by the Courts (*j*).

The term "common law" is defined in its largest sense as meaning

(*i*) Corbet, "Laws of the Empire," in the "British Empire Series," vol. v., p. 229.

(*j*) See the judgments of Lord Lyndhurst in *Freeman v. Fairlie* (1828), 1 Moo. Ind. Ap. Ca. 305, 343; Lord Brougham in *Mayor of Lyons v. East India Company* (1836), 1 Moo. Ind. Ap. Ca. 175, especially pp. 278 *et seq.*; Lord Kingsdown in *Advocate-General of*

*Bengal v. Ranee Surnomoye Dossee* (1863), 9 Moo. Ind. Ap. Ca. 387, especially at pp. 424, 425; and Lord Stowell in the "very celebrated and beautiful passage of his judgment in the case" (referred to by Lord Kingsdown in *Surnomoye Dossee's Case*) of "*The Indian Chief*" (1801), 3 Rob. Adm. Rep. 12.

the whole body of legal principle and usage which is common to all parts of England and now to all jurisdictions whose law is of English origin (*k*). In its early meaning it stood for the general law of England administered by the King's Court as opposed to special local customs, and distinct as a jurisdiction from those of the Admiralty, Ecclesiastical and Equity Courts. The principles of equity have, however, for more than three centuries been recognised in England as a moderating influence upon the rules of the common law; the equity jurisdiction has developed like its rival by means of judicial decision a body of rules and principles especially concerned with certain departments of law, in particular those dealing with family relations, and the double system has been adopted in the United States and in many British Colonies. The procedure of the Courts of Equity seems to have been originally derived from that of the canon law, but has become assimilated in many respects to that of the common law. The main characteristics of the common law, however, consist as much in its procedure as in its substance, and though many antiquated forms have been abolished, yet the vital rules of adhering to judicial precedent, public argument, oral examination of witnesses, and judgment openly delivered in a public Court, have followed it in its extension to new British territories, and are accepted canons of the administration of justice there as fully as in the land of their origin (*l*). In all British possessions except those acquired by cession or conquest from France, Holland, and Spain, and in all the United States except Louisiana, the common law of England and the principles of equity have been received as the basis of law, and in many cases are still the actual source of law where statute law does not apply.

**Law of Scotland.**—In the United Kingdom Scotland is the only exception to this general application of the common law. The Act of Union between England and Scotland (6 Anne, c. 11), which made one Legislature for the two countries, expressly maintained the existing separate laws and Courts for each kingdom, except so

(*k*) "Encyclo. Laws of Eng.," sub tit. But probably it does not include what is called the common law of Parliament: see *Chanter v. Blackwood* (1904), 1 Australia C. L. R. at p. 57.

(*l*) See Pollock, "Expansion of the Common Law" (1904); Pollock and Maitland's "History of English Law;" Kent's "Commentaries," i. 341—343, 469.

far as abrogated by the Act or by subsequent legislation, "with this difference betwixt the laws concerning public right, policy, and civil government, and those which concern private right, that the former might be made the same throughout the whole United Kingdom, but that no alteration be made in laws which concern private right except for evident utility of the subjects within Scotland" (Art. xviii.). Down to the fourteenth century, the laws of Scotland and England were very similar.

The "*Regiam Majestatem*," long supposed by Scotch lawyers to be an original collection of the laws of their own country dating, as it purported to do, from the end of the thirteenth century, but now ascertained to be a mere adaptation of a treatise by Glanvil, and the "*Quoniam Attachamenta*," from which it appears that the same writs were in force in both countries, show the closeness of this similarity. In time, however, a change began. The ecclesiastics, who filled the highest judicial offices even after the Court of Session was founded in 1532, had for the most part been trained abroad, and in their hands the canon law (*m*), and the Roman law came to exercise an increasing influence on the development of the law of Scotland. This influence was, of course, enhanced by the close political and social relationship which long subsisted between Scotland and France; and its fetters were riveted more firmly still by intimate association between Scotland and the Low Countries, and the custom among Scotch lawyers of studying at the University of Leyden in the seventeenth and eighteenth centuries. The latest stage in the development of Scots law was the adoption by Scotland of the law merchant as it had been defined by the English Courts, and particularly by the genius of Mansfield, and the maritime law of the two countries has now been declared to be the same (*n*). The law of Scotland consists partly of statutory, or written law, and partly of customary or unwritten law. The former has the express authority of the legislative power, and includes:—

(i.) Acts of Parliament, not only those passed by the Scots Parliament prior to the Union, but also those passed by the British Parliament since that date so far as they concern Scotland.

(*m*) Prior to the Reformation, Scotland possessed in the canons of the Provincial Councils a canon law of her own, and it seems that the general canon law was only authoritative in

Scotland in so far as it was incorporated in the canons of such councils (Bell's "*Report Putat. Marr.*," p. 178).

(*n*) *Currie v. McKnight*, [1897] A. C.

97.



(ii.) Acts of Sederunt and Acts of Adjournal, which are ordinances issued by the Judges of the Court of Session and Court of Justiciary, for regulating procedure in the civil and criminal Courts respectively.

(iii.) Regulations or bye-laws made by Government Departments and other public bodies, under statutory authority. The customary or unwritten law (the "common law") derives its sanction from the tacit consent of king and people without express enactment, such consent being presumed from the ancient custom of the community. Decisions of the Supreme Courts are regarded as part of the common law, and are binding on inferior Courts until reversed or displaced by statute.

**Law of Wales.**—On the conquest of Wales, by the statute of Rhuddlan, or Statutum Walliae (12 Edw. I. c. 1), the Welsh laws were approved of in a modified form, but considerable additions were made to them from the English common law, and a new judicial system was introduced. Wales then comprised only the portion which was directly subject to the English Crown and not the portions seized by the English Barons, who became the lords marchers, and held the marches as fiefs of the Crown. These were annexed to the Crown of England by the statute 28 Edward III. st. 1, c. 2; and in 1536 by 27 Henry VIII. c. 26, the whole of Wales (which was then divided into twelve counties) was incorporated in the realm of England (*o*), the whole English statute and common law was put in force in Wales, and the English language was directed to be used in the Courts of justice. In 1542 (*p*) a Court of Great Sessions, subsidiary to the Council then reorganised which exercised the government, was established for the administration of justice, and had assigned to it the judicial duties of the commissions of Assize in England, and a right of appeal in pleas real and mixed was given from it to the Courts at Westminster, and an appeal in pleas personal to the President and Council of Wales at Ludlow. This Council assumed jurisdiction over the Principality, the marches, and the neighbouring English counties, and was abolished by 1 Will. & Mary, c. 27. The Court of Great Sessions came to an end in 1830 (11 Geo. IV. & 1 Will. IV. c. 70), when the Welsh counties were placed under the jurisdiction of the Courts at Westminster. The English law of succession to realty was substituted

(*o*) And see 20 Geo. II. c. 42.

(*p*) 34 & 35 Hen. VIII. c. 26.

for the Welsh law in 1536 (*q*). All lands in Wales were made tenable by English tenure, and according to the common law of the realm of England in 1542 (*r*), and the English law of personal succession was introduced throughout Wales in 1696, in place of the custom in some parts of "a reasonable part" for widows and younger children (*s*).

**Law of Ireland.**—The common law was introduced into Ireland early in the reign of John, and Courts of justice were set up in conformity with the law of England. By Poynings' Law (1495) all the then existing law of England was extended to Ireland, and the incorporation of English statute law into the Irish system was carried still farther by statutes of the Irish Parliament, especially in 1782 and onwards. Many important English statutes were, however, never applied to Ireland. In addition to this, in spite of the existence of the Irish Parliament, the English Parliament always claimed the right to legislate for Ireland, and the English Judges held that English statutes were binding there. This right was definitely placed on record by the Act 6 Geo. I. c. 5, of the British Parliament, but this Act was repealed in 1782 (22 Geo. III. c. 58), and the exclusive right of the Irish Parliament to legislate for Ireland was acknowledged by the Act 23 Geo. III. c. 28. The legislative independence of Ireland, granted in 1782, came to an end with the Act of Union in 1800 (39 & 40 Geo. III. c. 67, and 40 Geo. III. Ir. c. 38), but the laws and Courts of each kingdom remained as before, except that the ultimate appeal from the Irish Courts, which then lay to the Irish House of Lords—a right only definitely recognised by the statute 23 Geo. III. c. 28, after having been the subject of a prolonged contest between the Irish Legislature and judiciary on the one side and the English Parliament on the other, who claimed this right for its own House of Lords (*t*),—was declared to lie to the British House of Lords.

**Canon Law.**—Wherever the influence of the Church extended, the canon law governed or moulded the development of a large part of the systems of jurisprudence which it found in force. All questions connected with marriage, succession, and legitimacy, as well as all matters relating to ecclesiastical rights and duties, passed under the

(*q*) 27 Hen. VIII. c. 26.

Laws of Eng., tit. Wales.

(*r*) 34 & 35 Hen. VIII. c. 26, s. 91.

(*t*) Stat. 6 Geo. I. c. 5; "Encyclo.

(*s*) 7 & 8 Will. III. c. 38; "Encyclo.

Laws of Eng., tit. Ireland.

cognisance of the Courts Christian, and were determined by the *jus canonicum*. The *Corpus Juris Canonici* consists of the following books:—(I.) the “*Decretum Gratiani*,” a systematic collection, published between 1139 and 1142—(a) of the rules of the canon law as to ecclesiastical persons and offices, (b) of *causæ* or cases propounded for solution, and (c) of the laws as to the ritual and sacraments of the Church. The work was compiled by Gratian, a monk of Bologna. It contained the Papal decretals down to 1139. (II.) “The Decretals of Gregory IX.” These were promulgated in 1234. The work consists of five books, divided into titles and chapters, and dealing respectively with topics, the subject-matter of which is indicated by the mnemonic line: “*Judex, Judicium, Clerus, Sponsalia, Crimen*.” (III.) The “*Liber Sextus*,” or “*Sext*,” published by Pope Boniface in 1298, an exclusive edition of all the decretals between 1234 and 1298. (IV.) The “*Clementines*.” These are the decretals published by Pope Clement V., in 1313, and re-published by his successor, Pope John XXII., in 1317. (V.) The “*Extravagants of John XXII.*,” decretals which, as they were not contained in the old official collections, were called “*Extravagants*,” ranging from 1316 to 1334. (VI.) The “*Extravagantes Communes*,” a similar collection from 1281 to 1484.

The relative authority of these six books was thus described by Professor Maitland (u):—“The ‘*Decretum*’ never received any formal sanction, and, according to the doctrine that prevails among the Roman Catholic canonists of modern times, no text (*auctoritas*) is any the better for being contained in that volume. Such a canonist would be quite free to say that a particular text was forged and of little, if any, value. As to the *dicta Gratiani*, they were never regarded as more than the opinions of a venerated master. However, an official edition of the ‘*Decretum*’ was published by Pius V., in 1582, and Catholics were prohibited from making changes in the text. On the other hand, the Decretals of Gregory IX., the ‘*Sext*,’ and the ‘*Clementines*’ are authoritative statute books. Each of them is to be considered as a single whole published by a legislator at one moment of time, so that there can be no talk of one passage being prior to, and therefore abrogated by, another and a later passage. Further, the book as a whole comes from a legislator; therefore no sentence in it can be

(u) “*Encyclo. Laws of Eng.*,” tit. “*Canon Law*.”

invalidated by any discussion of its history previous to its insertion in that book, for the Pope was free to alter the decretals that he was collecting and codifying. On the other hand, a passage in the 'Sext' can overrule or abrogate a passage in the 'Decretals of Gregory IX.,' and a passage in the 'Sext' may be overruled by a passage in the 'Clementines': the one will be *lex prior*, the other *lex posterior*. Lastly, the two books of 'Extravagants' are unofficial: no decretal is the better for being in them; no decretal is the worse for not being in them. However, they have been considered to contain the most generally useful Papal edicts of the period that they cover, a period of degeneration in the history of the Papacy" (v).

**Civil Law.**—Among the primary systems the civil law holds the most prominent place. It is the great source from which most other systems of jurisprudence have been derived, and they still recognise the influence of its principles and doctrines. "*Servatur ubique jus Romanum non ratione imperii sed rationis imperio.*" The most important texts of the Roman law were collected and revised between 529 and 534 A.D., under the Emperor Justinian. This collection, known as the *Corpus Juris Civilis*, consists of (1) The "Institutes," an educational text-book; (2) The "Digest," or "Pandects," a compilation of *dicta*, opinions, etc., from the writings of the most eminent Roman lawyers; (3) The "Code," a chronological collection of Imperial Statutes; and (4) The "Novels," or new laws made subsequent to Justinian's codification. From the twelfth century onwards, there was a remarkable revival of the study of Roman law, beginning in Northern Italy, and gradually extending over the whole of Western Europe. From the law-schools it passed into the Courts, and found a place in the Statute-books, in some cases supplementing,

(v) The Canon Law as such has been held by the Courts in recent times not to be in force in England except in so far as its provisions have been expressly adopted by judicial decision or legislation, but Professor Maitland advanced a contrary position, namely, that previously to the Reformation the whole of the Canon Law and the rulings of the Roman Legates were binding in the English ecclesiastical tribunals and were part of the

English ecclesiastical law, and except in so far as they are consistent with later legislation still form part of it. (For a full treatment of the subject see his work on "Roman Canon Law in the Church of England.") Lyndwood's "*Provinciale*," which has been accepted by the Courts as an authoritative exposition, cites foreign authorities as a commentary on the English constitutions.

in others superseding the native laws and customs. Hence the civil law has furnished the great bulk of what is common in the laws, procedure, and legal notions of modern countries. As regards the British Dominions, the Roman law and its developments by continental civilians have been much more closely followed in Scotland than in England, and its influence is still predominant in those colonies which were settled by Holland, France and Spain, *e.g.*, South Africa, Canada, Mauritius, and Trinidad (*x*). The development of the civil law in Holland, and its fusion with the native German law into the system of Roman-Dutch law, requires special notice (*y*) in view of its now being the basis of law throughout South Africa, Ceylon and British Guiana, and is dealt with in a subsequent chapter. Of its adoption into the systems of other European States, where it has been the foundation for the codification of the law, France offers the best example.

**Law of France.**—Three principal stages may be noticed in the historical development of the law of France (*z*).

From the beginning of the monarchy to the 17th of June, 1789, the date of the famous declaration of the National Assembly, France was under the *régime* of the "Droit Ancien." From June 17th, 1789, to December 31st, 1804, when the Code Napoleon was promulgated, we have a "Droit Intermédiaire." Lastly comes the "Droit Nouveau," inaugurated by the Code Napoleon.

**Droit Ancien.**—The "Droit Ancien" consisted of—(1) "Ordonnances," (2) "Customs," (3) "Roman Law."

**I. Ordonnances.**—The *Ordonnances*, or ordinances, comprised (1) ordinances properly so called, *i.e.*, regulations (styled, under the first race of kings, from their division into chapters or *capitula*, "capitularies") made by the sovereign, for the most part, although not invariably after sittings of the States General, and with reference to *doléances* presented at those sittings dealing with general

(*x*) The branches of English law affected by the civil law are the Admiralty and Ecclesiastical laws, which borrowed from its procedure and its principles, *e.g.*, the law of salvage, the rule of division of loss in collision, and the law of general average.

(*y*) See Part I., Chap. III., and see Part II., Chap. I.

(*z*) See Huc, "Commentaire Théorique et Pratique du Code Civil," vol. i., pp. 20 *et seq.*; Esmein, "Cours Élémentaire d'Histoire du Droit Français"; Viollet, "Histoire du Droit Civil Français"; Fuzier Herman, "Rép. Gén." tit. " Coutumes," vol. xv., at p. 469.

heads of law; (2) edicts (*édits*), regulations promulgated by the sovereign *ex proprio motu*; (3) declarations, applying and interpreting ordinances and edicts; and (4) letters patent, conferring special privileges on individuals. As many of the ordinances, falling under the first of the above-mentioned classes, afterwards formed a basis for the Napoleonic Codes, a few words may be said here as to their character and history.

From the fourteenth to the seventeenth century a series of ordinances was promulgated, which, although they belong rather to the category of amending Acts than to that of codes, yet effected important reforms in civil and criminal procedure.

"The series," says Sir Courtenay Ilbert (*a*), "begins with the Ordinance of Philip 'le Long' in 1318. Other ordinances followed in the troublous times of John and Charles VI. The great Ordinance of Montil-les-Tours, in the reign of Charles VII., embodied the programme of reforms which the Crown desired to effect at the close of the Hundred Years' War. The fifteenth century closed with two great ordinances, based on the grievances presented by the States General of 1484, the Ordinance of July, 1498, and that of March, 1498 (Ordinance of Blois). The reign of Francis I. was marked by the great Ordinance of Villers-Cotterets (1539). Then came the ordinances which are associated with the name of the Chancellor l'Hôpital, and of which the three most important, Orleans (1560), Roussillon (1563), and Moulins (1566), arose out of the sittings of the States General at Orleans in 1560. The States General of 1576 led up to a new Ordinance of Blois in 1579. The series was closed by the Ordinance of 1629, drawn up by the Chancellor Michel de Marillac, and based on the grievances presented by the States General of 1614 and on the suggestions made by the subsequent assemblies of "notables." These ordinances dealt, among other things, with such subjects as the celebration of marriages (1579, 1629), the registration of births, deaths, and marriages (1539, 1579, 1629), the law of evidence (1566), the registration of gifts (1539, 1566), and the limitation of entails (*substitutions fidei-commissaires*) (1560, 1566). But their most important work was in connection with the procedure of the Courts. They fixed the essential lines of civil and criminal procedure, and completely transformed the character of criminal

(a) "Legislative Methods and Forms," pp. 9—10.

procedure, substituting for the accusatory, oral, formal and public procedure of the feudal Courts the inquisitorial, written, informal and secret procedure of the Roman and canon law. This change was principally effected by the Ordinances of 1498 and 1539."

In the reign of Louis XIV. four ordinances of a wider scope were prepared on the suggestion of Colbert : (1) That of 1667, "*Sur la Procédure Civile*"; (2) that of 1670, on criminal procedure; (3) the "*Ordonnance du Commerce*" of 1673, supplemented by the "*Ordonnance de la Marine*" of 1681; and (4) the "*Ordonnance sur les eaux et forêts*" of 1669. In the reign of Louis XV. the Chancellor d'Aguesseau, in partial execution of his contemplated codification of French law, added to the pile four ordinances of a more ambitious character : (1) The Ordinance of 1731 on gifts; (2) that of 1735 on wills; (3) that of 1747 on substitutions; (4) that of 1737 on *faux*. "The first three of these ordinances," says Sir Courtenay Ilbert (*b*), "have been to a great extent embodied in the Code Civil; the fourth has passed almost in its entirety into the existing Codes of Civil and Criminal Procedure. The Code du Commerce practically consists of Colbert's '*Ordonnances du Commerce and de la Marine*, and this accounts for that code being to a great extent out of date and unsuited to modern commercial requirements." To quote a final passage from the same author : "The ordinances of the fourteenth to the seventeenth centuries answer to our amending Acts. The Ordinances of Louis XIV. and Louis XV. are codes. They were framed by learned Commissions. They presented in a complete, systematic, and detailed form the whole of a particular branch of the law. They extended to the whole of the country. They were the immediate predecessors of the existing French codes, and to a great extent they suggested the form and supplied the material of these codes" (*bb*).

II. Customs.—The "Customary law" prevailed in the provinces of the north (*pays du droit coutumier*), where Latin civilisation received the rudest shocks in its collision with the "Barbarians" (*c*). The origin of the customary law of France has been the subject of controversy (*d*). Montesquieu and Merlin attribute it to the establishment of feudalism. Klimrath finds its source in the Germanic laws

(*b*) "Legislative Methods and of Roman law from the sixth century Forms," p. 11. to the twelfth, see Huc, p. 25.

(*bb*) *Ibid.* p. 10.

(*d*) Fuzier Herman, *ad loc. cit.*, s. 2.

(*c*) As to the extent of the survival

which the Barbarian invaders brought with them into Gaul, although, except as regards matters dealt with in the Capitularies of Charlemagne, which bound all the subjects of the Empire, the vanquished Gauls remained under the sway of their own laws. Probably both Germanic law and feudalism contributed to its formation (*e*).

III. **Roman Law.**—Finally, in the provinces of the South (Guienne, Languedoc, Provence, Dauphiné, Lyonnais, Beaujolais, Forez, and Auvergne), the *pays du droit écrit*, the Roman law prevailed, not the pure Roman law, but the Roman law of the Lower Empire, in the time of its decadence, with the modifications introduced into it by local usages (*f*), and the jurisprudence of the Parlements, which are referred to below.

Each of the three great classes into which the “Droit Ancien” divides itself—Ordinances, Customs, Roman Law—gave rise in turn to incidents of which account must be taken.

**The Parlements.**—Around the royal ordinances there raged the struggle—the last phases of which ushered in the French Revolution—of the Parlements to convert the registration (*enregistrement*) of these instruments from a mere piece of machinery for their promulgation into a means of securing a share in the legislative power of the sovereign. The struggle was waged with varying fortunes. If the king was feeble, the claim of the Parlements was successfully asserted; if he was strong, it was overridden by royal mandate (*lettre de jussion*), or “bed of justice.” Its assertion, however, whether successful or unsuccessful, had important juridical results. It fostered the growth of the idea of homogeneous legislation, binding through the whole monarchy (for this was the character which an ordinance, registered by all the Parlements, enjoyed); and it enhanced the authority of the subsidiary legislative decrees (*arrêts de règlements pour l’avenir*) made by these bodies in their judicial capacity.

**Changes in the Customary Law.**—And while legislation by ordinance was thus undergoing change, changes far more profound were passing over the customary law of France. It consisted, on the eve of the French Revolution, partly of general usages, partly of usages of local application. The former prevailed throughout an entire

(*e*) Fuzier Herman, *ad loc. cit.*, ss. 8,      (*f*) See *supra*, p. 13.  
9; Huc, *ad loc. cit.*, pp. 22—24.



province; the latter were confined to a bailiwick, a parish or a town. The general customs numbered, according to the authorities, about sixty; of the special, or local, customs, there were some three hundred (g). The consequences of this state of things are well known. "The traveller in France," says Voltaire, "changes laws as often as he changes horses." The existence of alleged local customs had to be proved judicially, where authoritative written evidence was not available, by groups of witnesses (*par turbes*) selected (h) at haphazard in the district, whose customary law was at stake. Frequently the testimony of the *turbe* was equally divided between two customs of a directly contrary character. Even when it worked satisfactorily as regards an issue being reached, proof *par turbes* was costly and dilatory. And the whole system was fatal to the development of a unified body of law.

Remedial forces, however, began to work. In the *pays du droit coutumier*, it had always been the rule that, where custom was silent, judges should have regard to the Roman law. From the fourth century to the fourteenth, the need of a crystallisation of the customary law into written shape had been felt, and a few of the *coutumes* had been actually committed to writing (i). The famous Ordinance of Montil-les-Tours, promulgated by Charles VII. in 1453, directed that all the customs of the kingdom should be ascertained and committed to writing with a view to their consideration and acceptance by the Grand Council of the Parlement. From the time of Charles VII. onwards, the necessary task of committing the customary law to writing, instead of leaving it to the tender mercies of an ill-guarded tradition, was never lost sight of (j). Possibly the authors of these compilations had no other end clearly in view than that of rendering the customary law certain before their eyes. But, if so, they worked better than they knew. Familiar themselves with the principles of Roman law, they amended the customary law in the light of these principles, in the process of consolidating it (k); they prepared the way for codification directly; and indirectly too, although without their being

(g) Fuzier Herman, *ad loc. cit.*, s. 20.

(h) Bonnier, "Traité des Preuves," i., p. 184.

(i) See Fuzier Herman, *Rép. Gén. tit. "Coutumes,"* s. 11.

(j) The various efforts made in the

direction of the consolidation of the *Coutumes* are described in Fuzier Herman, *ad loc. cit.*, ss. 14 *et seq.* Cf., also *La Cloche v. La Cloche*, (1872) L. R. 4 P. C. at p. 334, n. (1).

(k) See Huc, *ad loc. cit.*, pp. 29, 30.

conscious of it, their labours tended to bring about the same result. The customary law, consolidated by the authority, and promulgated by the will, of the Sovereign, was the natural precursor of the Napoleonic Codes (*l*).

**Changes in Roman Law.**—Lastly, the Roman law also changed its position under the *régime* of the “Droit Ancien.” As in the *pays du droit coutumier* it had spoken, when custom was silent, so in the *pays du droit écrit* its own silences were supplied by the customary law. Thus, the Roman law was still further influenced by Germanic ideas, while, on its own side, it struck into the soil of the customary law with ever deepening and more widespreading roots. It is scarcely necessary to add that in France, as in every other country to which the power of the Church extended, canon law governed, prior to the Reformation, and profoundly influenced, subsequently to it, the law of domestic relations and testamentary and intestate succession.

**Droit Intermédiaire.**—We pass now to the “Droit Intermédiaire.” It was the era of rapidly changing constitutions. From May 5th, 1789, to September 30th, 1791, the National Assembly held sway. Its chief contribution to the development of the law was the organisation of the judiciary, and the separation of the legislative, executive, and judicial powers. From October 1st, 1791, to September 21st, 1792, the Legislative Assembly was supreme. It established divorce, abolished substitutions, fixed the age of majority at twenty-one years, and modified the law as to *puissance paternelle*. The Convention, inaugurated on September 21st, and replaced by the Dual Consulship and Directory on October 26th, 1795, accorded to natural children the rights of legitimate children, and remodelled the law of succession in the light of the dominant theory as to the equality of wealth. The laws of the Consulate belong partly to the “Droit Intermédiaire,” partly to the “Droit Nouveau.” But as they are all intimately connected with the drama of codification, they may perhaps be considered most conveniently under the latter head—to which we now turn in concluding this preliminary survey of the origin and development of the law of France.

**Droit Nouveau.**—The conception of a code of law, applicable to

(*l*) It gradually became a maxim of public law that to the sovereign alone belonged the right of directing the consolidation and reform of customs (Merlin, “Rép.,” tit. “Coutume,” s. 1; Fuzier Herman, *ad loc. cit.*, s. 18).

the whole of France, had long been familiar to statesmen and jurists. Louis XI. had expressed the wish that there should be one weight, one measure, and one single law for the whole of his kingdom; the consolidation of the customary law gave a practical impulse to such aspirations, and, with the French Revolution, the matter necessarily assumed a definitive form. The Constituent Assembly inscribed "un code de lois civiles communes à tout le royaume" on its legislative programme. The Legislative Assembly went a step further. It invited the views of all citizens, and even foreigners, on the subject. The Convention nominated a committee of legislation to draw up a scheme for a civil code within a month. Two abortive *avant-projets* were prepared and presented by Cambacérès. One was too complicated, the other too concise. A third scheme, also presented by Cambacérès, was drawn up under the Directory.

**The Code Civil.**—These *travaux préparatoires* had their own value. But the completion of the task of providing France with a uniform law was reserved for Napoleon. He appointed a commission of four jurists—Tronchet, President of the Court of Cassation; Préameneu, Procureur-General; Maleville, member of the Court of Cassation; and Portalis, Commissary in the Conseil de Prises—and charged them to prepare, with the utmost expedition, a workable code of civil law. The sequel is sketched by Maleville himself (*m*). In four months the preliminary labours of the commission were finished. The results, embodied in distinct laws—afterwards to form the titles of the Code Civil—were submitted to the judiciary for their observations, and were passed successively, in the usual way, and enacted. Finally all these separate laws were united into, and by a law of March 21st, 1804, were promulgated as, a Code Civil des Français, a title which, on the establishment of the Empire, was replaced by that of the Code Napoleon, only to yield again in later monarchical and republican days, to that of the Code Civil. From the day on which the Code Civil became executory throughout French territory all the prior sources of law—ordinances, customs and Roman law—ceased to be of any effect in regard to the subjects comprised in the code (*n*).

(*m*) "Analyse du Code Civil," procedure, C. C. P. art. 1041. As these laws are not retrospective, the old laws  
Preface.

(*n*) There is a similar provision as to frequently came before the French

Considerable modifications have been effected by subsequent legislation in the provisions of this and the other codes next mentioned (o).

**Completion of Codification in France.**—The structure of codification in France was completed by the enactment of the Code of Civil Procedure in 1807 (January 1st) (*p*), the Code of Commerce in 1807 (*q*), the Code of Criminal Procedure in 1808 (*r*), the Penal Code in

Courts in the earlier part of last century; and it has been said that they may still be invoked for the decision of points not foreseen by the existing legislation, Merlin, "Rép.," tit. "Coutume," s. 7; Toullier, i., s. 157; Fuzier Herman, "Rép. Gén.," tit. "Coutume," ss. 32—36 *bis*.

(o) Among the most important amendments to the Code Civil may be mentioned the law of May 8th, 1816, abolishing divorce, and the law of July 27th, 1884, re-establishing it; the law of May 8th, 1819, abolishing the *droit d'aubaine* and arts. 726 and 912; the law of July 22nd, 1867, repealing arts. 2059 to 2070 and abolishing imprisonment for debt in civil cases; the laws of March 21st, 1849, February 7th to 12th, 1851, June 29th, 1867, December 16th to 29th, 1874, February 14th to 16th, 1882, June 26th, 1889, and July 22nd, 1893, relating to nationality; the law of March 9th, 1891, according rights of intestate succession between husband and wife and modifying art. 767; the law of June 20th, 1896, amending art. 151 (*actes respectueux*); the law of March 1st, 1898, modifying art. 2075, &c.

(*p*) See art. 1041. The Code of Procedure has been amended by the laws of June 2nd, 1841, May 21st, 1858, June 2nd, 1881, and October 23rd, 1884, as to forced sales of immovables; and the laws of May 3rd, 1862, and March 8th, 1882, abridged certain delays of procedure touching arts. 73, 443, 445, 446, 483 to 486, 1033 and arts. 160, 166, 373, 375 Code Com.

(*q*) The principal laws which have

affected the Code of Commerce are the law of June 14th, 1841, amending arts. 216, 234 and 298, limiting the liability of shipowners for the acts of the captain; the law of July 17th, 1856, abrogating arts. 51—63, requiring compulsory arbitration between partners; the law of July 24th, 1867, as to companies; the law of February 12th, 1872, modifying arts. 450—550, Code of Commerce and 2102 Code Civil, and providing that in case of bankruptcy the landlord's privilege should be restricted to two years' rent, *i.e.*, the current year and the year following; the laws of December 10th, 1874 and July 10th, 1885, modifying arts. 191, 192, 201 to 207 and 233, determining the conditions, forms and effects of mortgages on ships; the law of August 12th, 1885, extending the right of shipowners to abandon the vessel, &c., modifying or repealing arts. 216, 258, 259, 262, 263, 265, 315, 318, 334, 347 and 386; the law of April 11th, 1888, modifying arts. 105 and 108 as to carriers (under the old law the receipt of the goods and payment of the cost of transport operated to discharge the carrier from all liability; the new disposition allows three days for protestation); the law of March 4th, 1889, and April 7th, 1890, modifying the law of bankruptcy and introducing a concurrent system of judicial liquidation less rigorous in its consequences to traders.

(*r*) The Code d'Instruction Criminelle has been modified in certain particulars by the laws of March 4th, 1831, April 28th, 1832, September 9th, 1835, July

1810 (s), and the Forest Code in 1827 (t). There are also the Code Penal Militaire, the Code de Justice Militaire pour l'armée de mer and the Code Rural.

**Application of French Law to other Countries.**—The Code Civil (u), the Code of Commerce, and the Code of Civil Procedure are in force in Mauritius, greatly modified by local legislation (x).

In the Channel Islands, the law is based on the Coutume de Normandie (y). Until about thirty years ago, the Coutume de Paris was applied in St. Lucia (z). The common law of Quebec (except in commercial matters, where the commercial law of England has made its influence felt) is the earlier Coutume de Paris, as formulated and modified by Ordinances of Louis XIV. and Louis XV.

3rd, 1852, June 13th, 1856 (conditions of appeal), July 14th, 1865 (release of prisoners previous to trial); and the law of June 8th, 1895, providing for the rehearing of cases where new evidence has come to light and for compensation for detention (arts. 443 to 447).

(s) The amendments to the Code Penal have been very numerous. A series of laws from May 17th, 1819, to July 29th, 1884 dealt with Press offences; the law of June 25th, 1824, allowed the judge to admit extenuating circumstances and to reduce the penalty; the law of April 28th, 1832, modified or repealed arts. 2, 7, 8, 13, 18, 20, 22 to 24, 28 to 30, 33 to 36, 44, 45, 47, 51, 56, 63, 67 to 69, 71, 78, 81, 86 to 91, 108, 111, 132, 133, 139, 143, 144, 165, 177, 178, 184, 187, 189, 198, 200, 205, 228, 231, 233, 259, 263, 271, 282, 304, 309 to 311, 317, 331, 333, 334, 362 to 365, 381 to 383, 386, 388, 389, 400, 408, 434, 435, 463, 471, 475 to 480, 483, and replaced them by 102 new articles; a number of other articles were amended by the law of May 13th, 1863, including arts. 330, 331, 333 (offences against morality), art. 345 (crimes against children), arts. 382, 385, 387, 389, 399, 400, 405, 408 (larceny, swindling, &c.); the law of May 25th, 1864, amended arts. 414,

415 and 416, concerning illegal coalitions; the law of June 27th, 1866, extended the jurisdiction of the French Courts to crimes and offences committed abroad; the beneficent law of *sursis* (*loi Berenger*), March 26, 1891, empowered the Court to suspend the sentence in the case of first offenders; the law of April 2nd, 1892, extended arts. 435 and 436, punishing the destruction of buildings by explosive substances.

(t) The Code Forestier has been amended by laws of June 18th, 1859, and November 23rd, 1883, and by decrees of August 1st, 1827, and March 30th, 1886. See Fuzier Herman, tit. "Codes," 276 *et seq.*

(u) For the effect of the Code Civil on the legislation of other countries, see "Le Code Civil," Paris (1804—1904), 1904.

(x) See further on this subject, *infra*, p. 201.

(y) See on this subject, *infra*, pp. 133, 138.

(z) *Infra*, p. 255. "St. Vincent, in the West Indies, was formerly governed by the Coutume de Paris, and though most traces of French law have disappeared from the Island, it is said that some old French *arrêêts* are still in force" (Ilbert, "Legislative Methods and Forms," p. 169).

**The Netherlands.**—The want of codification made itself felt in the seven United Provinces before the French Revolution, and the commentaries, systematic digests, and the institutes of learned lawyers during the latter part of the eighteenth century may be taken as so many private endeavours to systematise the usages and customs of the different provinces. As soon as the Revolution of 1795 had overthrown the existing state of affairs and had practically put an end to provincial autonomy, the National Assembly resolved that one complete and general law should be introduced for the whole country, in civil as well as in criminal matters. This resolution was never carried into effect.

The first official attempt at codification was made in 1798, when a committee was appointed to draft a Civil and a Criminal Code, as well as a Code for Civil and Criminal Procedure, for the whole of the Republic. The committee set to work, but before they had finished their task a new form of government had been introduced; the work was retarded, and this was to a great extent due to the aversion of the different provinces to a uniform legislation for the whole of the Republic. Finally, on October 3rd, 1804, three Bills were read for the first time in the Legislative Assembly, viz :—

- (1) General introduction to the law, in eleven chapters;
- (2) Criminal Code, in four books;
- (3) Law of Evidence, in six chapters.

These codes only contained national law. Objection was afterwards made to them by the National High Court of Justice, but this was based not on their contents, but on the form in which those contents were embodied, which was the didactic method, resembling rather the language of Justinian's Institutes than the wording of the statutory laws to which we have now become accustomed, and of which the Code Napoleon set the example.

But although the legislators of those days, in their admiration for the exceptional law-drafting capacity of the French, often imitated not only the form, but the substance, of French law, the French Codes did not change at a single move the general principles of the law of the Netherlands and thereby supersede the national institutions wholesale. Much of the specific provincial law has gone, but this would have gone with any attempt to make the law of the country uniform, and it would have done so irrespective of any foreign legislation. When J. van der Linden

wrote his Institutes of the Laws of Holland, which may be called the fundamental Code of South Africa, he certainly did not place on record what was considered law in every particular part of the United Provinces.

In 1805 the form of government again changed. On August 7th, 1806, Holland was declared a kingdom, and Louis Napoleon was created King of Holland. Meanwhile the committee appointed in France by Bonaparte in 1800 had finished their work, and the 80me Ventose An XII. (March 21st, 1804)—the “Code Civil des Français,” afterwards called “Code Napoleon”—received the force of law, and as already stated this was followed by four other Codes—“Code de Commerce,” “Code Pénal,” “Code de Procédure Civile,” “Code de Procédure Pénale.”

The Code Napoleon was greatly admired in Holland, and to this admiration the rejection of the drafts of 1804 was partly due.

The King appointed new committees in 1807 for the purpose of—

- (1) Drafting a Penal Code. The result of this committee's work was embodied in the “Penal Code for the Kingdom of Holland,” and this Code was promulgated on February 1st, 1809.
- (2) Remodelling the Code Napoleon for the kingdom of Holland. The result of this work is embodied in the “Code Napoleon as arranged for the Kingdom of Holland,” promulgated on May 1st, 1809.

The Codes of Procedure and a Code of Commerce, though drafted, never became law. On July 9th, 1810, Holland was declared part and parcel of the French Empire (“La Hollande est réunie à l'Empire”). On November 8th, 1810, the French Codes were declared to have the force of law in those regions which formerly were the United Provinces.

In 1815 Holland regained its independence, and became the Kingdom of the Netherlands. In accordance with a provision in its new Constitution committees were appointed for the drafting of a Civil Code. After having experienced some difficulties, they laid in November, 1820, a Draft Code before the States General.

This Code, generally called the “Ontwerp, 1820,” was principally founded on Roman-Dutch law, and is still quoted in the Dutch Courts as the text book of the law of Holland as it was

in the early part of the nineteenth century. Unfortunately it suffered from the same fault as the earlier attempts at codification of a purely Dutch character—viz., its style was too didactic. It was coldly received by the Legislature, especially by the representatives of the Southern Provinces, and finally returned to the committee for revision, the committee being at the same time enlarged.

Once, again, however, the influence of the Code Napoleon manifested itself, and the revised draft, which, together with three other Codes, was laid before the States General and passed by the Legislature between the years 1826 and 1829, bore distinct traces of having been remodelled after the French example. The war of 1830, and the subsequent separation of the Southern Provinces (henceforward called Belgium) from the Northern (the Netherlands), prevented these Codes from becoming law. New committees were appointed, and new drafts prepared, and finally on October 1st, 1838, the present Codes of the Netherlands came into force.

During this period two systems of law had been recognised in the Courts of law, viz., the former laws and customs of the provinces, until, say, 1810, and the French laws from 1810 to 1838. Undoubtedly the latter period has greatly influenced the Dutch Codes; yet the French law never supplanted the Dutch. The most serious attempt, during that period, to restore the former law—not in its diversity of local customs, but as a system in codified form—was the above-mentioned “Ontwerp, 1820.”

A second attempt to re-establish the principles of Roman-Dutch law was made after the separation between the Netherlands and Belgium in 1830, when new committees were appointed to revise the Codes of that year. These revised Codes became the law of the Netherlands, and remained so, to a great extent, for the remainder of the century.

The Civil Code has been several times partially amended, among the most important enactments being the 1901 Act regarding paternal power and guardianship, and the 1903 Acts for sanctioning the treaties for international regulations regarding marriage, separation and divorce, and regarding guardianship of minors. The principal amendment of the Commercial Code was made by the passing of the new Bankruptcy Act, 1898, while numerous



amendments in the Code of Civil Procedure among others were necessitated by the change in the judicial system of 1875 (the last named Code was extended in 1897 by the Act sanctioning the rules adopted by international treaties regarding the service of writs outside the jurisdiction); commissions de bene esse (*commissions rogatoires*), payments of security for costs by foreigners, admission of foreigners to sue *in formâ pauperis*, and personal arrest (*contrainte par corps*). In 1886 a new Penal Code was promulgated. Considerable amendments were made inter alia in 1901 and 1905, when a new system was introduced regarding the punishment of juvenile offenders. At the same time as the Criminal Code was introduced important amendments were made in the Code of Criminal Procedure.

**Belgium.**—The French Codes were introduced into Belgium as part of the French Empire.

In Belgium, the Civil Code, in its edition of 1807, is still in force (*b*).

It has, however, been considerably modified by subsequent legislation (*c*). An *avant-projet* for its revision has been prepared by M. Laurent, the Belgian jurist. The Code of Civil Procedure is also in force, but the title relative to competence in contentious matters has been dealt with in a special law of March 25th, 1876. The French Code of Commerce still forms the basis of the commercial law of Belgium, but important amendments have been introduced by later legislation (*d*). The Belgian Penal Code of June 8th, 1867, has now taken the place of the French Penal Code of 1810. The Code d'Instruction Criminelle is undergoing revision; a Forest Law

(*b*) It has been republished in Brussels between 1873 and 1876, by Messrs. Delebecque and Hoffman, and has been republished at intervals of about five years by M. De le Court at Brussels (last edition, 1906).

(*c*) Notably by the law of December 16th, 1851, on the *régime hypothécaire*; the laws of May 20th, 1882, December 26th, 1891, on marriage; the law of February 11th, 1905, on divorce; the laws of April 27th, 1865, November 20th, 1896, and May 16th, 1900, on successions; and the law of July 27th, 1871, on "la contrainte par corps."

(*d*) As regards, for instance, bank-

ruptcy (law of April 18th, 1851), patents (law of May 24th, 1854), merchants (law of December 15th, 1872), partnership (law of May 18th, 1873), insurance (law of June 11th, 1874), and shipping (law of August 21st, 1879); laws on special subjects, such as lunacy, registration, accidents to workmen, expropriation, merchant shipping, trade marks, mines, &c., have been from time to time added to the Code, without being incorporated into the text of the Code itself. These laws are to be found in the supplement to the "Codes Belges," edited by M. De le Court.

of December 19th, 1854, based largely on the provisions of the corresponding French Code of 1827, has been enacted; and a new Code Rural was substituted in 1886 for the French Code of 1791.

**Italy.**—In Italy, the Code Civil was promulgated successively in the provinces of Piedmont (*e*), in Liguria, and in the Duchies of Parma and Plaisance (*f*), in Lombardy, and in the other provinces constituting the kingdom of Italy (*g*), in the Venetian provinces (*h*), in the Duchy of Lucca (*i*), at Guastala (*k*), in the ancient Pontifical provinces of Urbino, Ancona, Macerata, and Camerino, in the kingdom of Naples (*l*), and finally, at Rome and in the Papal patrimony there (*m*).

For some time anterior, however, to the Napoleonic Codes, the need for legislative unity had begun to attract attention in different parts of Italy. Of the various collections of the laws of the mediæval republics, we do not propose to speak here (*n*).

But with the eighteenth century, a serious movement towards codification had begun. It may suffice, in this connection, to refer to the Constitution promulgated by Victor-Amédée II. of Savoy in 1729 (*o*), to the Royal Constitutions of Charles Emmanuel III. published in 1770, in both of which works considerable prominence was assigned to the subject of civil law, to the "Codice Estense" of 1771, which not only covered practically the whole field of civil and criminal law, but had uniformity and unity for its avowed objects, and to the projected, though abortive, Codes of the two Sicilies in 1744, and Tuscany in 1745.

On the fall of the Napoleonic dynasty, the former laws, for the most part, resumed their sway. But the Code Civil still remained in force in Genoa, and continued to do so even after the reunion of Genoa to Piedmont (*p*), except in regard to the provisions dealing with the celebration of marriage and acts of the civil status; in Lucca, except as to divorce (*q*); and in the Duchy of Parma, save

(*e*) March 30th, 1804.

(*f*) September 23rd, 1805.

(*g*) January 16th, 1806.

(*h*) March 30th, 1806.

(*i*) April 24th, 1806.

(*k*) August 12th, 1806.

(*l*) January 1st, 1809.

(*m*) January 14th, 1812.

(*n*) See the Introduction to Prudhomme's "Code Civil Italien," pp.

xviii.—xxii.

(*o*) See Sclopis, "Hist. de la Légis. Ital.," ii., p. 423.

(*p*) Prudhomme, *ubi cit. supra*, p. xxiv., n. (2).

(*q*) The Code Civil remained in force in Lucca even after it was reunited to Tuscany in 1847, and indeed up to the date of the promulgation of the Italian Civil Code.

as regards the celebration of marriage, divorce, and the rule that in the absence of a marriage contract, spouses are subject to the *régime* of community. In the kingdom of Naples, the Code Napoleon still largely survived; Lombardy and Venice, in passing under the control of the House of Hapsburg, were subjected also to the Austrian Civil Code of 1811 (*r*).

But the movement in favour of the unification of the laws of Italy which had commenced prior to the Napoleonic conquests, had received from the temporary ascendancy of the French Codes, prolonged, as we have seen, in various directions after the political dominion on which it had rested, had been swept away, an impulse which was not destined to be arrested. In 1819 was promulgated the "Codice pel Regno delle due Sicilie," which followed the general divisions of the Napoleonic codification, and drew largely from the texts of the Codes. In the same year, the Civil Code of Parma, which remained in force till the Italian Civil Code of 1866 came into operation, was enacted. From 1827 to 1848, Sardinia was governed by the Code of Charles Felix, "Leggi Civili pel Regno di Sardegna." In 1837, the Albertine Code was promulgated for the continental provinces of the Sardinian States. In 1848 it superseded the Code of Charles Felix for the Island of Sardinia itself. In 1852, a revised edition of the "Codice Estense" came into force in the Duchy of Modena.

The task of constructing out of these various systems of law a Civil Code for Italy was initiated in 1859, and completed in 1865. The new Italian Code came into force on January 1st, 1866. In the same year, Codes of Civil, and Criminal, Procedure were brought into operation. In 1882, a Code of Commerce was promulgated; on June 30th, 1889, the latest edition of the Italian Penal Code (*s*) was published; and the work of codification for the kingdom of Italy was thereby completed.

**Spain.**—As one of the two great sources of law arising in Europe and affecting the rest of the world through colonies (the other being the English law), Spanish law is of the highest interest. Codes were promulgated from very early times.

(*r*) The Austrian Civil Code was promulgated in Lombardy and Venice by letters patent of September 28th, 1815.

(*s*) As to the origin of this Code, see an article by M. Vidal, entitled "Le Projet du nouveau Code Penal Italien," in *Clunet*, 1877, J. p. 344.

Early Spanish law is founded upon local and provincial customs and municipal privileges, and the codes are declaratory of the common law. Spain was always, as now, divided in customs, race, and language. From time immemorial no unity was obtainable and Ferdinand the Catholic and Isabella and their successors only achieved a practical unity in religion enforced by persecution, while the articles of the Council of Trent have hitherto formed the basis of the canon law.

The portions of Spain most dissimilar to the rest are the Basque provinces, of which the customs and ordinances (*fueros*) are perhaps some of the most ancient of all forms, including paternal government: the head of the family had the power of life and death; and the usages and the rules of their assemblies deserve a careful study. The King of Spain was only "master of Biscay," and the Basques paid no taxes, but contributed a quota collected by themselves.

The Catalans have also their own language and laws, which differ greatly from those of the rest of Spain. They were the chief mercantile and manufacturing race of the Peninsula, and their pre-eminence is shown by the Consolato de Mare and their laws of marine insurance.

The growth of municipal progress and the development of municipal and provincial administration was checked by the system of centralisation introduced by the Austrian dynastic house, and the national spirit of the different races, which still manifests itself in aspirations for local government, was suppressed by Charles V. and Philip II. and their successors.

**Sources of Spanish Law.**—Although the modern Spanish writers have been disinclined to admit the authority of the Roman law, yet the "Fuero Real," published in the year 1255, and the seven "Partidas" in 1260, abundantly establish that the Roman and Pontifical law were the chief sources of those compilations. Covarruvias, a distinguished jurist of Spain, has stated this to be his opinion: "Ego tamen ejus opinionis sum, ut Regias constitutiones, quas Septem partitum opus complectitur, quoties earum verba patiantur, existimem ad jus Pontificium Cæsareumque reducendas fore: ut nihil utriusque juris sanctionibus adversum in eis statui existimemus; quandoquidem earum legum conditoris potissimus fuerit scopus, in quem tantum opus ad Hispanæ Reipub.

utilitatem direxit, ex utriusque juris statutis, constitutiones prædictas Hispano sermone deducere" (t).

But in all the codes and laws of Spain the local and national customs have been followed.

Fernando III. el Santo, under whom Castile and Leon were united, formed the noble purpose of establishing a general body of laws by which he might unite all classes of society, repress the evils of feudal anarchy, and secure the wise and sound administration of justice. He died before he had completed this work. His son, Alfonzo the Learned (el Sabio), carried out his father's intentions by the formation of two Codes, the one called "Fuero Real," and the second the "Siete Partidas"; the former, promulgated in the year 1255, was designed as a precursor to the great work of the "Partidas."

**Fuero Real.**—The "Fuero Real" is divided into four books, composed of different titles. The subjects of the first book are laws for the observance of the Christian faith, the personal security of the king and his children, the duties of subjects, the alienation of church property, public officers, *alcaldes*, lawyers, notaries public, &c. The second book deals with procedure. The third book is principally occupied with the regulations respecting matrimony, jointures (*las arras*), gains (*ganancias*) property acquired after marriage, and the division of lands which are rented out (*se dan a plazos*), legacies and estates in trust (i.e., in administration) (u), inheritances, tutorship, and other points connected with these titles. From the tenth to the twentieth and last title of this book are to be found laws concerning the various classes of contracts. The fourth and last book treats principally of Jews, Saracens, and their slaves.

The "Fuero Real" has been compared, as to its nature and object, to the Institutes of Justinian.

**Partidas.**—The royal privilege or ordinance "Partidas" (divisions) is a complete body of law (*el cuerpo completo*), expressed in clear and excellent Castilian style, in strong contrast to its contemporary year-books in England. The first "Partida" is a compendium of the canon law, as it existed at that epoch. The second is a

(t) Covarruv. Var. Res. lib. 1, English trusts, which by foreign law are *substitutions* and illegal.

(u) This is not of the nature of

summary of the ancient laws and customs of the nation. The third, fifth, and sixth books contain an abridgment of the Roman law, respecting judgments, contracts, and last wills and testaments, each of which were well accommodated to the state of the monarchy at that time, and to deciding and settling doubtful points of the ordinary law. The fourth is a compendium of the civil and canon laws appertaining to espousals, matrimony, and their incidents; and the seventh and last is that which treats of crimes and their penalties, concluding in the manner of the Pandects and Decretals, with titles of the interpretation of words and rules of law.

**Other Collections of Spanish Laws.**—During the time which intervened from the formation of the “*Partidas*” to their first promulgation by the Cortes of Alcala, there were promulgated in the year 1310, “*Las Leyes de Estilo*,” which amounted in number to two hundred and fifty-two, without any division into books or other parts. They principally treat of procedure. Others, again, treat of contracts and testaments.

From time to time new laws or ordinances were published by royal authority, under the name of “*Pragmaticas*.” When they amounted to a considerable number, they were collected into one or more volumes by virtue of a royal ordinance, and acquired legislative force. Of this class was the first Code of the Ordinance of Alcala, made and authorised in the year 1348. It is divided into thirty-two titles, relative to the manner of conducting suits, regulations on the subject of contracts and testaments, and penalties attached to certain crimes. But a number of the old laws fell into disuse without being repealed and Isabel sought to remedy the confusion by ordering the collection and publication of the “*Ordenamiento de Montalvo*” (1485) (x). Neither this nor a subsequent collection (1508) proving satisfactory eighty-three laws were made and published by the celebrated Cortes held at Toro, Old Castile, in the year 1505. They provide for the solemnities of testaments—the right of succeeding *ab intestato*, and by testament, the augmentation (*mejora*) of the third and fifth given by the testator to one or more of the necessary heirs in preference to others, the order of succession for the nobles of Spain, the aliment to natural children, the penalties of adultery and other incidental titles inserted in the “*Recopilacion*.”

(x) “*Cambridge Modern History*,” i. 358.

There were several other collections of ordinances, proclamations, and other royal resolutions ; the first of which is known by the name of the "Ordenamiento Real," authorised and published by the Catholic "Kings" Ferdinand of Aragon and Isabella of Castile in the year 1496 (in 1497 Castile and Aragon were united) in eight books and different titles. They contained total or partial repeals of certain of the "Fueros," or local privileges.

A later collection of laws, called the "Recopilacion," was published in the year 1567, by virtue of an order made by Philip II. It includes the laws not repealed by the "Ordenamiento Real," the "Ordenamiento de Alcala," those of Toro, and others which had been published in the interim. The "Autos Acordados," decisions first published in 1745, form the third and last volume of this work ; the later collection is known as the "Novisima Recopilacion."

The first book treats of the Catholic religion, and of ecclesiastical subjects. The second book treats of laws in general, of judicial functionaries, and of the king's council (*el concejo del Rey*). In the commencement of the third the procedure in the various tribunals is laid down. It then treats of the administration of justice in towns and provinces by the *corregidores* (inferior judges or magistrates), and contains a variety of regulations respecting the duties of officers of the revenue and for the examination and admission of physicians, surgeons, apothecaries, farriers, &c. (*patentes*). The first title of the fourth book contains rules and regulations for the proper maintenance of the royal jurisdiction. The following twenty-one titles deal with the procedure in the courts ; the different species of judgments ; the mode of carrying on suits, and the time given for terminating them ; rules relative to pleas, answers, the taking of depositions, and the practice in the Courts of the first and second instance ; and the ten following define the duties of sheriffs (*alguaciles*) and jailors, and the fees allowed them by law.

Marriage, succession, contract, and their incidents are the subjects of the fifth book. It concludes with the titles relative to banks and their officers, goldsmiths, bakers, &c. The sixth treats of a necessary heir who receives an extra legacy of the third or fifth of the inheritance of the testator (*mejora*). The seventh provides for the succession of nobles. The fifteenth title prescribes the formalities with regard to taxes, respecting which there had been

anciently various disputes. The sixth and seventh books treat of knights and gentlemen, of towns, of vassals, of cattle, of fortresses, of the cortes, of ambassadors, inspections, tributes, ports; of those exempted from taxes, and not subject to the prohibition by which certain articles were prevented from being exported; of municipal corporations, the rents and property of councils, the privileges of cities, taxes, public boundaries and commons. The eighth relates to crimes and punishments.

After the publication of the "Recopilacion," there were issued by the kings of Spain numerous proclamations, instructions for governors of Spanish America, "*cedulas reales*."

The "Recopilacion de las Indias," the collection of laws of the Spanish settlements or colonies, is very similar to the "Recopilacion." It consists principally of regulations respecting the functionaries of the government in the Spanish colonies, and leaves the subject of contract, the rights of persons and things, &c., &c., to be regulated by the laws which are in force in old Spain respecting them (*y*).

The Ordinance of Bilbao is a commercial code of great value (*z*).

**Codification.**—In Spain, unity of legislation has always been sought after and imperfectly realised until lately; it is now well defined and established. The territorial divisions of the kingdom and the purely local customs gave rise to great difficulties. Generally speaking, as to family rights and duties and questions of status, condition, legal capacity of persons, and testamentary and intestate succession, certain provinces retain many of the *fueros*, or local customs, especially Catalonia and the Basque provinces (*a*). The Civil Code of 1889 is to a certain extent, like all modern codes based on the French model.

Besides the Civil Code, there are in force in Spain, a Code of Civil Procedure (*Ley de Ejuiciamiento Civil*) (1881), a Penal Code (1870), a Military Penal Code (1884), a Code of Criminal Procedure (1882), and a Code of Commerce (1885); laws of mines, waters, railways; and there is a hypothecary law (*ley hipotecaria*) of 1861,

(*y*) Mines are dealt with by the *ordenamientos*, the rules of which are still in use in South America as bases of the different mining codes. Trinidad is now the only portion of the British dominions in which Spanish

law is still in force (see p. 247).

(*z*) See Mr. Porter's "History of the Spanish Law," 5 Wheaton's Rep. App. 32.

(*a*) See Code Civil, arts. 12—15.



applying to Spain and her late colonies and dependencies, which provides a simple and practical form of land registration. This system is also in force in all the South American Republics. In all the nations of Spanish and Portugese origin the same general outlines of development and codification of law have been followed.

**Austria.**—Austria possesses, besides numerous special laws of a consolidating character (*b*), a Civil Code dating from 1811, a Code of contentious Civil Procedure (August 1st, 1895), a Code of non-contentious Civil Procedure (August 9th, 1854), a Code of Commerce (December 17th, 1862), a Bills of Exchange Code (January 25th, 1850), a Code of Criminal Procedure (May 23rd, 1873), a Penal Code (May 27th, 1852), a Military Code (December 5th, 1868), a Forest Code (December 3rd, 1852), a Mining Code (May 23rd, 1854), and two Codes of Judicial Organisation (Civil-Jurisdictions-norm) (August 1st, 1895), Gerichts-organisations-gesetz (November 27th, 1896). The German Commercial Code and Bills of Exchange Code are also in force in Austria (*c*).

**Hungary.**—Hungary possesses no Civil Code—civil procedure is chiefly regulated by the Law LIV., 1868 (regular procedure), and the Law XVIII., 1893 (summary procedure), the first modified by the Law LIX., 1881, and both completed by several other laws of lesser importance—but has two Penal Codes (Law V. of 1878: crimes and delicts; and Law XL. of 1879: contraventions), a Code of Commerce (Law XXXVII. of 1875), a Bills of Exchange Code (XXVII., 1876), a Criminal Procedure Code (XXXIII., 1896), and a number of enactments regulating special branches of the law (*d*).

**Portugal.**—Portugal has a Civil Code (1867), a Code of Civil Procedure (1876), a Penal Code (1886), a Military Penal Code (1875), and a Code of Commerce (1888).

**Denmark.**—Denmark is still governed, as regards civil rights, by

(*b*) Law of Tutorships (December 26th, 1895), Patents Law (January 11th, 1897), Law of Waters (May 30th, 1869), Law of Registers Landed Property (July 25th, 1871), Law of Civil Practice (May 27th, 1896), Law of Bankruptcy (December 25th, 1868).

(*c*) See Germany, *infra*, p. 40.

(*d*) Especially Law of Marriage (XXXI., 1894), Guardianships (XX.,

1877), Civil Execution (LX., 1881), Bankruptcy (XVII., 1881); other laws of importance are the Forest Code (XXXI., 1879), Tutorships (XVI., 1884), Patents (XXXVII., 1895), Procedure of Inheritance (XVI., 1894), Rural Code (XII., 1894), Register of Landed Property (1855) Family Entail (1862, 1869), The Mining law is the same as that for Austria.

the "Danske Lov" of 1683; and possesses also a Penal Code of 1866, and a Military Penal Code of 1881.

**Switzerland.**—In Switzerland considerable steps have been taken towards the codification of the law. The place of a Commercial Code is taken by the Federal Law of Obligations of 1881 (*e*), which does not govern obligations arising out of family relations or inheritance (§ 76). The law of marriage and capacity is also federally regulated by the laws of December 24th, 1874, and June 22nd, 1881 respectively (*f*), and drafts of Federal Civil and Criminal Codes (*g*) have been prepared and are now under discussion. The Civil Code was laid before the Legislature in 1904 after revision by a commission of experts from all parts of the country (*h*), and in 1905 the Federal Council added proposals for the enactment, as part of the Civil Code, of a revised version of the Law of Obligations, and a concluding title containing provisions regulating the application of Swiss and foreign laws and of the existing and new law (*i*).

Bankruptcy and the enforcement of debts are governed by the Federal Law of April 11th, 1889 (*k*), which also is intended to be slightly modified in connection with the introduction of the new Civil Code.

Family law and the law of inheritance, as well as the law of property (*Sachenrecht*), are still governed by the laws of the cantons. As regards these matters the laws of the cantons have been divided into four groups (*l*):—

(1) **Uncodified Systems.**—These include the laws of Uri, Schwyz,

(*e*) The dates here given are those of the passing of the laws in question; in most cases they came into force at a later date.

(*f*) Both these laws are intended to be superseded by the Federal Civil Code.

(*g*) These drafts, in their latest form, are frequently referred to in the following pages.

(*h*) Botschaft des Bundesrates an die Bundesversammlung zum Bundesgesetz enthaltend das schweizerische Zivilgesetzbuch (vom 28 Mai 1904).

(*i*) Botschaft des Bundesrates an die

Bundesversammlung zu einem Gesetzesentwurf betreffend die Ergänzung des Entwurfes eines Schweizerischen Zivilgesetzbuches durch Anfügung des Obligationenrechtes und der Einführungsbestimmungen (vom 3 März 1905).

(*k*) Bundesgesetz über Schuldbetreibung und Konkurs; commentary by Weber and Brustlein, 2nd ed. enlarged and revised by Dr. Alexander Reichel, Zürich, 1901.

(*l*) Huber, "Schweizerisches Privatrechts," i. pp. 49—59.

the two half-cantons of Unterwalden, Basel, and Appenzell respectively, St. Gallen and Thurgau (*m*).

(2) **The French Civil Code and its Imitations.**—The French Civil Code was introduced into Geneva and the French-speaking part of Bern in 1804, when those territories formed part of the French Republic, and it is still in force there, unaffected by the alterations which have been introduced into it in France. In Geneva, however, the Code has been much developed by subsequent cantonal legislation; and some portions of it have been abrogated by the Bernese Legislature for the territory under its jurisdiction.

The Civil Codes of the following cantons are classed as imitations of the French Code:—Vaud (1819), Fribourg (1834—1849), Ticino (1837; revised in 1882), Neuchatel (1853—1855; revised edition, 1899), Valais (1853).

(3) **Codes Modelled on the Austrian Civil Code.**—Under this head are classed the Codes of Bern (1824—1830), Luzern (1831—1839), Solothurn (1841—1847; replaced by a new Code in 1891), and Aargau (1847—1855).

(4) **Code of Zürich and its Modifications.**—The Civil Code of Zürich was passed in instalments in the years from 1853 to 1855, and was revised and re-arranged in 1887. The following cantons have modelled their Civil Codes upon it:—Schaffhausen (1863—1865), Zug (1861—1875), Glarus (1869—1874), and the Grisons or Graubünden (1862) (*n*).

As regards criminal law, offences against the Federal Constitution and Federal officials are dealt with by the Federal Criminal Law of February 4th, 1853. There are also numerous cantonal Criminal Codes and Codes of Civil Procedure, which do not come within the scope of this work.

**Norway.**—The “Norske Lov” of 1687 is still the Civil Code of Norway, but this Code is greatly modified by subsequent enactments.

(*m*) Several of these cantons have partial codes, some of them enacted as part of an intended complete codification of the private law. Thus the half-canton of Unterwalden called Nidwalden has a Law of Persons (1852) and a Law of Inheritance (1859), and Thurgau has two parts of a Code of Private Law under the headings of Law of Persons and Family Law (1860,

revised with the addition of a Law of Inheritance in 1885).

(*n*) A comparative discussion of the provisions of these Codes, with an account of the history of private law in Switzerland, will be found in the great work of Professor Eugen Huber (“System und Geschichte des Schweizerischen Privatrechts,” 4 vols., Basel, 1886—1893).

Norway has also a Maritime Code of July 20th, 1898. The penal law is contained in the Code of May 2nd, 1902, and the Military Penal Code of the same date; and there is also a Code of Criminal Procedure (July 1st, 1887, modified by a law of March 25th 1900).

**Sweden.**—The “Sverges Rikes Lag” of 1794 is still, with many alterations, the Civil Code of Sweden. There are also the *Usök-ningslag* (regarding actions for debt) (1877), Penal Code (1864), and Military Penal Code (1881). Her commercial and maritime law are embodied in the Code of 1794 and in a Maritime Law of 1901. A new law on the sale of movable goods, of June 20th, 1905, became valid from January 1st, 1906. There is also a law of June 28th, 1895, on limited liability of companies.

**Russia.**—In Russia the “*Svod*,” of which various editions have been published, commencing in 1833 and ending in 1887, is both the Civil Code (t. 10, Part I.) and the Code of Commerce (t. 11). The Swedish Civil Code of 1794 is in force in Finland; the French Code Civil, with modifications introduced in 1825 and 1836, in Poland; the Baltic provinces are regulated by the Civil Code of 1864. Finland has a Maritime Code (April 15th, 1874), and a Commercial and Industrial Code (1879); in Poland the French Code of Commerce is in force. Russia has also her own Penal Code (*o*), which has been in force in Poland since 1876. Civil and criminal procedure are regulated by the Judicial Codes of 1864.

**Turkey.**—Codification has made its influence felt upon the complicated mass of laws prevailing in the Ottoman Empire (*p*). The Civil Code (1869) follows the French Code in general outline. The Penal (1859), Commercial Procedure (1861), and Civil Procedure (1880) Codes approach closer to their French models but with considerable modification, while the Commercial Code (1850) (*q*) and Criminal Procedure (1879) consist of the French Codes with certain omissions. The Maritime Code is based upon the Codes of France and Holland, with sections taken from others.

**United States.**—In almost all of the States of the United States the common law of England and the statutes of that country prior to a date regarded as suitable for the particular State, such date for historical or other reasons varying from the fourth year of James I.

(*o*) The last revision was made in George Young (1906).  
1903.

(*q*) Translated for use in Cyprus by

(*p*) See *Corps de Droit Ottoman*, by G. G. Amirayan (1906).

to the year 1776, are the basis of the present law. In some cases those laws were recognised or adopted by State Constitutions, in others by decisions of the Courts or by statute, &c., but they were in no case adopted in their entirety, and always with such modifications as were adapted to the different States. The common law as it existed in England was never in force in all its provisions in any State. It was adopted so far as its principles were suited to the conditions of the Colonies, and from that circumstance it is found that what is common law in one State is not so in another. The judicial decisions, the usages and customs of the respective States, can alone determine how far the common law was introduced and adopted in each (*r*). The chief instances in which the common law has been modified or not adopted are in the laws of inheritance, entails, and the law of real property generally (*s*). One State (Louisiana) has a Civil Code (1808) based on the Code Napoleon, owing to its former connection with France, and the same Code has influenced the laws of Texas and Hayti (*t*). California has incorporated in its codes various provisions of the civil law; and Arizona, New Mexico, and Missouri have to some extent followed the Spanish and Mexican laws.

Codification has made great advances in the United States in the latter part of the last century. The earliest Code of Civil Procedure was adopted by the State of New York in 1848, and this Code has been adopted either as a whole or with modifications in the greater number of other States. To Georgia belongs the credit of first adopting a code of substantive law in 1860, followed by Dakota in 1866, and this example was followed by California in 1872, which in addition enacted a political code with penal and civil procedures. The States and Territories now possessing codes are as follows, the dates given being those of the last revision:—

Alabama (1898), Alaska (1900), Arizona (1866), Arkansas (1894), California (1897), Colorado (1887), Delaware (1893), District of Columbia (1901), Georgia (1895), Idaho (1901), Indiana (1881), Iowa (1897), Kansas (1901), Kentucky (1904), Louisiana (1870),

(*r*) *Wheaton v. Peters* (1834), 8 Peters at p. 659, *per* McLean, J.

(*s*) See "Two Centuries' Growth of American Law" (1901), Yale Law School, *passim*.

(*t*) For the original law of Louisiana see 5 *Wheaton*, App. 32; 3 *Wheaton* 202a; and "Two Centuries' Growth of American Law," p. 52a.

Maryland (1905), Michigan (1897), Minnesota (1878), Mississippi (1892), Missouri (1899) (in this State revision takes place every ten years), Montana (1895), Nebraska (1866), Nevada (1900), New Mexico (1897), New York (1880), North Carolina (1888), North Dakota (1899), Ohio (1880), Oregon (1902), South Dakota (1908), Tennessee (1896), Texas (1895), Utah (1898), Virginia (1887), Washington (1901), West Virginia (1899), Wisconsin (1898), Wyoming (1899). Porto Rico and the Philippines by Act of Congress retain to some extent the laws that were existent there at the time of their cession to the United States by Spain. The following States not enumerated above, though having no code, possess statutory schemes of procedure which follow generally the lines of the English procedure, the date of the last revision being appended:—Florida (1892), Illinois (1874), Maine (1904), Massachusetts (1902), New Hampshire (1892), New Jersey (1886), Rhode Island (1896), Vermont (1894). One State alone (Pennsylvania) has no formal code or statutory system of procedure.

**South American Republics.**—The former colonies and dependencies of Spain (and Portugal) have all codified their laws and procedure, but it seems that up to the present the text of the “Partidas” are cited in argument as matters of jurisprudence. In the South American Republics codification has made great strides. There are Civil Codes in the Argentine Republic (1882), in Chili (1857), in Colombia (1873) (*u*), in Costa Rica (1886—87), in Guatemala (1877), in Mexico (1884), in Peru (1870), in Salvador (1880), and in Uruguay (1877). Codes of Civil Procedure exist in Colombia (1872—73, promulgated in 1887, and amended in 1889 and 1890), in Costa Rica (1887), in Guatemala (1876), in Mexico (1880), in Peru (July 28th, 1852), in Salvador (1880); Codes of Criminal Procedure in Buenos Ayres (1888), in Colombia (1872—73), in Costa Rica (1841), in Guatemala (1878—79), in Honduras (1880), in Mexico (1880), and in Salvador (1880), and Chili (1906); Penal Codes in Colombia (1872—73), Costa Rica (1880), Guatemala (1877), in Honduras (1866), in Mexico (1874), Salvador (1880), Uruguay (1884), and Venezuela (September 3rd, 1891); and Codes of Commerce in the Argentine Confederation (1862, 1889), in Bolivia (1834), in Chili

(*u*) Modified by laws of August 24th, 1887, and November 12th and December 2nd, 1890.

(1867) (*x*), in Colombia (1887) (*y*) and a Code of Maritime Commerce (1884), Costa Rica (1850), Dominican Republic (French Code de Commerce, introduced in 1845), Guatemala (1877), Honduras (August 27th, 1880), Mexico (1889), Nicaragua (March 12th, 1869), Paraguay (Argentine Code, introduced in 1870), Peru (1853), Salvador (May 1st, 1882), Uruguay (1865), and Venezuela (1873). Brazil has a Code of Civil Procedure ("Consolidacao," published in 1878), a Penal Code (October 11th, 1890), a Code of Criminal Procedure ("Consolidacao" of 1876), and a Code of Commerce (June 25th, 1850). There is a Code for Cuba. In the Philippines the law seems as yet undecided as between Spanish and American law.

**Japan.**—With the collaboration of European and American jurists, the following Codes were prepared, and are now in force in Japan : Civil Code, 1890 ; Code of Civil Procedure, April 21st, 1890 ; Penal Code, 1880 ; Code of Criminal Procedure, October 7th, 1890.

**Egypt.**—A Civil Code, a Code of Commerce, a Code of Maritime Commerce, a Code of Civil and Commercial Procedure, a Penal Code, and a Code of Criminal Procedure were, by a decree of the Khedive of September 16th, 1875, brought into force in Egypt as from October 18th in the same year (*z*).

**Germany.**—**Civil Code of 1900.**—The latest and one of the foremost triumphs of codification has been attained in Germany. At the time of the creation of the German Empire in 1871, there was perhaps no country in the world which contained within its borders a greater variety of systems of legislation than Germany (*a*). Codified systems of law existed: (1) in a large part of Prussia (namely, the Prussian Landrecht, in force since 1794, which owed its origin to Frederick the Great and anticipated to some extent the idea of Napoleon's Code); (2) in Rhenish Prussia, Rhenish Hesse, and the Bavarian Palatinate the French Code Civil, in force since the French occupation of these provinces; (3) in the Grand Duchy of Baden, the Baden Landrecht, a reproduction of the French Code Civil in force since 1810; (4) in the Kingdom of Saxony, the Civil Code for the Kingdom of Saxony (a Code in force since

(*x*) Code of November 23rd, 1865, in force since 1867.

(*y*) Code of Panama, October 12th, 1869, promulgated in 1887, and amended by Law of November 21st, 1890.

(*z*) The text of the decree is given in Clunet (1875), J. p. 399.

(*a*) See Fuzier-Herman, "Rép.," tit. "Allemagne," ss. 374 *et seq.*; Schuster, "The German Civil Code," L. Q. R., xii., 45, p. 17.

1865). In the remaining parts of Germany (with the exception of some small border districts in which Northern laws were in force), occupied by about one-third of the German population, the so-called German common law (a modernised system of Roman law) was in force, subject to local customs in certain matters. "The tide of Napoleonic invasion," says Sir Courtenay Ilbert (*b*), "brought the French codes into the Rhenish provinces, where they obtained a permanent footing. Thibaut (1814) preached to Germans the duty of codifying their law on French lines, but Savigny, in his powerful counterblast, pointed out (and exaggerated) the imperfections of the French codes, and told his countrymen bluntly that they had not yet acquired either the knowledge of legal principles, or the experience, or the terminology requisite for successful codification. German codification slumbered until 1848, when it was awakened by the revival of the desire for national unity."

The codifications of the law of Bills of Exchange ("Wechselordnung") and the General Commercial law ("Allgemeines Handelsgesetzbuch"), completed in 1848 and 1861 respectively, were successively introduced as State laws into all the States forming part of the then existing German Confederation, including Austria (in which country, however, the part of the Commercial Code dealing with Maritime law was excepted). Both Codes became laws of the North German Federation (1869), and subsequently of the German Empire (1871). A Criminal Code, enacted for the North German Federation in 1870, became a law of the Empire in 1871. In 1879 Codes of Civil and Criminal Procedure, the Code organising the Imperial and State Tribunals, and the Bankruptcy Code came into force. A committee of distinguished lawyers from all the German States was appointed in 1877 to prepare a draft Code for the whole Empire. The result of the labours of this committee, and of a second committee appointed in 1890, was the basis of the draft prepared by the Federal Council, and adopted, with certain modifications, by the Reichstag as the new German Civil Code. The Code was passed in 1896 and came into force on January 1st, 1900, simultaneously with the revised editions of the Commercial Code, the Civil Procedure Code and a number of other statutes which had to be brought into harmony with the Civil Code.

(*b*) "Legislative Methods and Forms," pp. 17, 18.



## CHAPTER II.

### LAWS OF THE EMPIRE OF INDIA.

**British India and India outside British India.**—For the purposes of this Chapter, and indeed for all legal purposes, it is necessary to distinguish two classes of territories, both comprised in the expression “empire of India”: (1) “British India” and (2) “India outside British India”; or, in other words, “India of the Crown” and “India of the Native States,”—the territories vested in His Majesty and the territories vested in Indian Princes and Chiefs. According to the definition in s. 18 (4) of the Interpretation Act, 1889 (*a*), and in s. 3 (7) of the Indian General Clauses Act, 1897 (*b*), the expression “British India” means all territories and places within His Majesty’s “dominions” which are, for the time being, “governed” by His Majesty through the Governor-General of India, or through any Governor or other officer subordinate to the Governor-General. These are the territories and places which were described in s. 2 (8) of the repealed Indian General Clauses Act, 1868 (*c*), as the territories for the time being “vested” in Her late Majesty by the Government of India Act, 1858 (*d*), other than the settlement of Prince of Wales’ Island, Singapore and Malacca, and include all territories which, previously to the passing of that Act, had been in the possession or under the government of the East India Company, under the general name of “India,” in trust for the Crown, and all territories which, since the passing of the Act, have or may become vested in the Crown, by virtue of any rights referred to in the Act. According to s. 18 (5) of the Interpretation Act, 1889, the expression “India” means British India, “together with any territories of any native Prince or Chief under the suzerainty” of His Majesty, exercised through the Governor-General of India, or any Governor or other officer

(*a*) 52 & 53 Vict. c. 63.

(*b*) Indian Act X. of 1897.

(*c*) Indian Act I. of 1868.

(*d*) 21 & 22 Vict. c. 106.

subordinate to the Governor-General. These territories are elsewhere described—as in s. 22 of the Indian Councils Act, 1861 (*e*), and s. 1 of the Indian Majority Act, 1875 (*f*)—as the dominions of Princes and States in India “in alliance with” the Crown. The position of the Native States has also been regarded as one of “subordinate alliance,” or of “subordinate union.” Sometimes they are described as “mediatised,” and sometimes as “semi-sovereign.” Sir William Lee-Warner has suggested, in reference to the theory—supported by Sir Henry Maine—of the divisibility of sovereignty, that the expression “sovereign” can appropriately be applied to them. At the present time, they are generally known as “Protected States,” or as “Feudatory States.” They are really *sui generis*, as observed by Sir John Macdonell, and their precise position can best be understood by an examination of the treaties affecting them (*g*).

**Law of the Protected States.**—The Protected States in India are subject only to the suzerainty of the paramount Power, which guarantees to the Chiefs the peaceable enjoyment of their position and possessions. They have, as a rule, their own laws and their own Courts. They administer their own land-revenue, and make their own police arrangements; and, for legislative and administrative purposes generally, their territories are regarded by the Legislatures and Courts of British India as foreign. For international purposes, however, they have no separate existence. They cannot maintain diplomatic relations with any foreign State; and, in reference to such matters, they and their subjects have the position and privileges and share the responsibilities of the people of British India. All alike can claim the protection of the British Crown against the aggressions of any enemy, while all are bound to help the British Government in resisting such aggressions. The claim of subjects of Native States to British protection in foreign countries is recognised by the Orders in Council which regulate the exercise of British jurisdiction in Zanzibar, Muscat, and elsewhere (*h*). The British Possessions

(*e*) 24 & 25 Vict. c. 67.

(*f*) Indian Act IX. of 1875.

(*g*) Macdonell, Article on “Protectorates” in “Encyclopædia Britannica,” vol. xxxii., p. 37. See also the Article on “Suzerainty,” vol. xxxiii., p. 108; and Lee-Warner,

“Protected Princes of India,” ch. i. and ch. xiii.

(*h*) Ilbert, “Government of India,” pp. 142—146, 269. See also s. 15 of the Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 37), and Stat. R. & O. Rev., 1904, vol. v., pp. 88, 483.

extend to about 61 per cent. of the whole area of India, the remaining 39 per cent. being under the rule of nearly seven hundred Princes and Chiefs. In the Native States the law ordinarily administered is the customary law of each State, that is, broadly speaking, the Hindu or Muhammadan religious law, as modified by local or tribal usage. The Rulers of those States can adopt British laws if they wish to do so; but, in that case, the laws would become their own laws. Some of the larger States have Codes of their own, which are, in the main, adaptations of the British-Indian Codes; but, as regards civil matters at all events, the two leading systems of law in force in India outside British India are the Hindu and the Muhammadan law, qualified, it may be, more or less, by the influence of the Courts of British India. The position of political tribunals exercising civil and criminal jurisdiction in certain States for the Rulers of those States, and over their subjects, and of British Courts exercising extraterritorial jurisdiction over British subjects and certain other persons in Native States generally, is dealt with in Chapter III. of Part II.

Though the Native States are not subject to the laws of British India, British subjects, whether European or Indian, and servants of the Crown, whether British subjects or not, within the territories of the Native States, are not only subject to the Legislature of British India, but their safety and personal conduct are also a matter of special concern to the paramount Power (*i*). Thus offences committed by such persons in Native States, which, if committed in British India, would be punishable under the Indian Penal Code of 1860, are as a rule triable under s. 4 of that Code, as qualified by s. 188 of the Code of Criminal Procedure (*k*), by British Courts exercising jurisdiction in British India, whenever the offender may be "found" at any place in British India (*l*). The High Courts at Fort William, Madras, Bombay and Allahabad exercise original and appellate criminal jurisdiction over European British subjects, being Christians, resident in certain Native States; and in some States certain European British subjects, who are officers of the States, or residents therein, have been appointed

(*i*) See 24 & 25 Vict. c. 67, s. 22; 27 & 28 Vict. c. 17, s. 1; 32 & 33 Vict. c. 98, s. 1; and Ilbert, "Government of India," pp. 142, 459.

(*k*) Act V. of 1898.

(*l*) See also s. 64, clause *Seventhly*,

of the Code of Criminal Procedure, 1898; s. 23 of the Indian Extradition Act XV. of 1903; and Mayne, "Criminal Law of India," 3rd ed., ch. ii., paras. 30—36.

Justices of the Peace, for the purpose of dealing with cases in which European British subjects are the accused persons; and they can commit such cases for trial before a High Court in British India, or before the Chief Political Officer in the State, who is invested with the powers of a Sessions Judge, as defined in the Indian Code of Criminal Procedure, to enable him to try such cases (*m*).

**Law of British India.**—Speaking generally, the law in force in British India, as distinguished from the Protected States, is to be found (1) in Statutes of the British Parliament, (2) in Acts and Regulations of the Government of India, and of the several subordinate Governments, (3) in by-laws, rules, orders, and similar measures having the force of law, and made under the authority of British Statutes and Indian Acts and Regulations, and, (4) as regards various questions relating to marriage, succession, and other matters of vital importance, affecting various classes of the community, and not provided for by express enactment, either in the sacred writings of the parties concerned, as interpreted by the Privy Council or the Courts of British India, or in the customary law of particular districts, or villages, or even, sometimes, of particular families, as accepted, modified or supplemented by those tribunals. Moreover, under s. 23 of the Indian Councils Act, 1861, the Governor-General can, without the aid of his Council, make temporary ordinances, having the force of law, in cases of emergency. As regards the three Presidency towns of Calcutta, Madras, and Bombay, it has been stated by various authorities that by the East Indian Company's Charter of 1726 all the Common and Statute Law then extant in England was introduced therein and has remained in force so far as it was applicable to the circumstances of the English settlements, and except so far as it has been subsequently altered by Statutes relating to India (*n*).

(*m*) See, for instance, as regards the States of Travancore and Cochin, the Notifications of August 9th, 1875, in the "Gazette of India," 1875, Pt. I., p. 404 (reprinted in Macpherson, "British Enactments in force in Native States—Southern India," pp. 32, 24). See also "Gazette of India," 1874, Pt. I., pp. 485, 612.

(*n*) See Clark, "Rules and Orders of the Supreme Court of Judicature at Fort William in Bengal" (Calcutta,

1829), Preface, pp. iv., vii., viii.; Morley, "Digest," Introduction, pp. xi., xxii.; Stokes, "Statutes relating to India" (Calcutta, 1881), Preface, p. vii.; Ilbert, "Government of India," pp. 387, 388; and Shaw, "Charters relating to the East India Company from 1600 to 1761," pp. 237, 241, 244. As to the extent to which the Common Law was brought by English settlers with them into India, see the cases cited above in note (*j*) at p. 7. As to

It must, however, be noted that the earlier Charter of 1661 expressly empowered the Governor and Council of the several places where the East India Company had, or should have, any factories or places of trade, to judge all persons "belonging to" the East India Company, or that should "live under them," in all cases, whether civil or criminal, "according to the laws of this Kingdom," and to execute judgment accordingly (*o*).

**Acts of Parliament relating to British India.**—The undoubted "sovereignty" of the Crown over the territorial acquisitions of the East India Company in India was asserted in the Act of 1813 for continuing in the Company for a further term the possession of the British territories therein (*p*). It had, in effect, been established a few years previously; and carried with it the right to legislate for all classes of British subjects within the acquired territories (*q*). So far as it was applicable to local conditions, the criminal statute law prevailing in England in 1726, and again in 1753, and in 1774, has been held to have been introduced by the Charters of those years, and to have remained in force, in the three Presidency towns, so far as it was not subsequently altered or superseded by any Statute extending to India, or by any Act of the Indian Legislature (*r*). It has ceased to be in force since the passing of the Indian Penal Code of 1860, which applies *proprio vigore* to all parts of British India. A Table of Statutes passed before 1726, and held not to apply to India, is given in Vol. I. of the Collection of Statutes relating to India, published at Calcutta in 1881. A subsequent edition, published in two volumes in 1899 and 1901, contains a chronological Table of the Statutes relating to India, passed since 1698,

the power of the Governor-General in Council to repeal or alter any Act of Parliament in force in British India at the time of the passing of the Indian Councils Act, 1861, see s. 22 of that Act and the proviso to that section. As to the repeal by the Indian Evidence Act, I. of 1872, of so much of the English common law on the subject of evidence as was in force in British India before September 1st, 1872, see below, under the sub-title "APPLICATION OF BRITISH-INDIAN CODES."

(*o*) Shaw, "Charters," p. 44, and

Cowell, "Courts and Legislative Authorities in India," pp. 12, 13.

(*p*) 53 Geo. III. c. 155. See the preamble and s. 95.

(*q*) See 2 P. Wms. 75; Field, "Introduction to the Regulations of the Bengal Code," pp. 22—24; the Introduction to Part II. of this volume, and the remarks at p. 164.

(*r*) See Ilbert, "Government of India," pp. 34, 387, 388; and Stephen, "Nuncoomar and Impey," vol. ii., pp. 18 *et seq.*

and shows how far each Statute has been repealed or otherwise affected by subsequent legislation. Sir Courtenay Ilbert's work on "The Government of India" contains a "Digest" of the existing Parliamentary enactments relating to India, which, if it were enacted as a Consolidating Act, would repeal and supersede forty separate statutes ranging over a period of more than one hundred and twenty years. It reproduces the existing provisions of all Acts of Parliament dealing with such subjects as the government of India by the Crown, the powers of the Secretary of State and the Council of India, the powers—including the legislative powers—of the Government of India and the subordinate Local Governments, the constitution of the Civil Service of India, the constitution and jurisdiction of the Indian High Courts, the Ecclesiastical Establishments, and some supplemental matters (*s*). The provisions of some of the statutes will be referred to more particularly in Part II., which deals with the juridical constitution of the British Dominions, exclusive of the United Kingdom, and of those places, not forming a part of His Majesty's dominions, in which British Courts of justice have been established, and of certain other territories.

**Acts and Regulations of the Indian Legislatures.**—The growth of the legislative powers of the several Indian Governments can be traced in the provisions of various Charters of the East India Company and of Acts of Parliament which indicate the steps by which the present Council of the Governor-General for making Laws and Regulations and the Councils of the Governors of Madras and Bombay and of the Lieutenant-Governors of Bengal, the North-Western Provinces and Oudh—now known as the United Provinces of Agra and Oudh—the Punjab, Burma, and Eastern Bengal and Assam, have acquired their legislative functions. As those provisions help also to explain the process by which the whole structure of the British-Indian juridical system has been steadily built up, they will be referred to in detail in Part II.

**British-Indian Codes.**—Reference may, however, be made here to the measures adopted from time to time for the codification of the law of British India. By s. 53 of the East India Company Act, 1833 (*t*), provision was made for supplying the want of an Indian Code of law which should be based on the principle, propounded by Lord

(*s*) Ilbert, "Government of India," (t) 3 & 4 Will. IV., c. 85.  
Preface and Chap. III.

Macaulay, of "uniformity when you can have it; diversity when you must have it; but, in all cases, certainty." The Act recites the expediency of enacting such laws as may be applicable in common to all classes of the inhabitants of His Majesty's Indian territories, "due regard being had to the rights, feelings, and peculiar usages of the people," and of ascertaining, and, "as occasion may require," of amending all laws and customs having the force of law in those territories. A Law Commission was accordingly appointed in India, and met in 1834; and subsequently a second Commission was appointed in England under the Government of India Act, 1853 (*u*). A third Commission was appointed, also in England, in 1861, and a fourth in India in 1879. The principal work undertaken by the first Commission was the preparation of a draft Penal Code, which became law as the Indian Penal Code of 1860 (*x*)—the first Code of Civil Procedure (*y*), and a Limitation law (*z*), having been passed in the preceding year. "Macaulay's Code," as the Indian Penal Code has been styled—Macaulay having been a member of the first Commission and also the legal member of the Governor-General's Council from 1834 to 1837—has stood the test of time; for, since its enactment in 1860, the occasions have been rare on which the necessity for any substantial amendment of it has become apparent. The Civil Procedure Code of 1859 was amended by Act XXIII. of 1861; and both Acts were superseded by the Code of 1877 (*a*), which, in its turn, has been superseded by the Code of 1882 (*b*). The Limitation Act of 1859 has also been superseded, first by Act IX. of 1871, and then by Act XV. of 1877. The first Code of Criminal Procedure (which was drawn by the Second Commission) was passed in 1861 as Act XXV. of 1861; and was repealed by Act X. of 1872. That Code again was repealed by Act X. of 1882. The present Code is Act V. of 1898. In 1864 the Government of India passed a Minors' Act for persons other than European British subjects, which has since been superseded by the Guardians and Wards Act of 1890, which is of general application. In 1865 it passed a Marriage Act for Christians (which was repealed and superseded by Act XV. of 1872), a

(*u*) 16 & 17 Vict. c. 95.

(*x*) Act XLV. of 1860.

(*y*) Act VIII. of 1859.

(*z*) Act XIV. of 1859.

(*a*) Act X. of 1877.

(*b*) Act XIV. of 1882. A Bill for the re-enactment of the Code of 1882, with considerable amendments, is now before the Council of the Governor-General.

Succession Act for persons other than Hindus, Muhammadans, Buddhists and members of certain races, sects, or tribes which might be exempted from its operation, an Intestate Succession Act for Parsis, and a Marriage and Divorce Act for Parsis; in 1866 a Companies Act (which has been superseded by Act VI. of 1882); in 1868 a General Clauses Act (which was amended by Act I. of 1887, and superseded by Act X. of 1897); and in 1869 a Divorce Act for Christians. These Acts were drawn under the superintendence of Sir Henry Maine, who was the Legal Member of the Governor-General's Council from 1862 to 1869. In 1872 two important Codes—the Indian Evidence Act (c) and the Indian Contract Act (d)—were passed by the Government of India, having been drawn by Sir James FitzJames Stephen, who was the Legal Member of the Governor-General's Council at the time. The High Courts Criminal Procedure Act, 1875 (e), which was repealed by the Criminal Procedure Code of 1898, and the Specific Relief Act, 1877 (f), were carried by Lord Hobhouse through the Council, of which he was the Legal Member in those years. To the initiation of the fourth Law Commission, of which Sir Charles Turner, Sir Raymond West, and Mr. Whitley Stokes were the members—(Mr. Whitley Stokes having also been the Legal Member of Council from 1877 to 1882)—is due the enactment of the Negotiable Instruments Act (g) and the Acts relating respectively to Trusts, Transfer of Property, and Easements, which were passed in 1882. The work of codification, as indicated in the specific recommendations made by the fourth Commission in its report of November 15th, 1879, has not yet been completed. Those recommendations are set forth by Mr. Whitley Stokes in the General Introduction to his work on the "Anglo-Indian Codes," which contains a concise history of the origin and development of the important scheme of Indian codification. Mr. Stokes explains also the plan adopted by the draftsmen of the Codes in carrying out their work, and describes "one salient peculiarity" of the Codes—the use of "illustrations." These illustrations, as was observed by Sir Raymond West in *Reg. v. Rahimat* (h), "rank as cases decided" upon the provisions of the law "by the highest authority," that is by the Legislature

(c) I. of 1872.

(d) IX. of 1872.

(e) X. of 1875.

(f) I. of 1877.

(g) XXVI. of 1881.

(h) I. L. R. 1 Bom. 147, 154.



itself. As to the substance of the Codes, Mr. Stokes considers it "enough to say that their basis is the law of England, stripped of its local peculiarities, and modified with regard to the condition, institutions and climate of India, and the character, religions and usages of the population"; and he adduces instances of such modifications,—referring especially to the exemption of the backward districts of British India, known as the "Scheduled Districts," from the operation of rules "too elaborate for their inhabitants or administrators." (i)

**Personal Law of Hindus, Muhammadans, Buddhists and others, as administered in British India.—Hindu Law.**—The nature and origin of Hindu law have been thus described by Mr. Mayne (k):—"My view is that Hindu law is based upon immemorial customs which existed prior to and independent of Brahmanism. That, when the Aryans penetrated into India, they found there a number of usages either the same as, or not wholly unlike, their own. That they accepted these, with or without modifications, rejecting only those which were incapable of being assimilated, such as polyandry, incestuous marriages, and the like. That the latter lived on a merely local life, while the former became incorporated among the customs of the ruling race. That when Brahmanism arose, and the Brahman writers turned their attention to law, they at first simply stated the facts as they found them, without attaching to them any religious significance. That the religious element subsequently grew up and entwined itself with legal conceptions, and then distorted them in three ways. *First*, by attributing a pious purpose to acts of a purely secular nature. *Secondly*, by clogging those acts with rules and restrictions suitable to the assumed pious purpose. And, *Thirdly*, by gradually altering the customs themselves, so as to further the special objects of religion or policy favoured by Brahmanism."

The learned author tests this theory by applying it to the distinctive Hindu doctrines relating to the undivided family, to succession and to adoption (l). As regards the family system, he points out that it flourishes most vigorously in the Punjab and among the Dravidian races of the South, where the influence of Brahmanism

(i) Stokes, "Anglo-Indian Codes," Introduction, pp. xxvi. and xxvii. See also the Scheduled Districts Act (XIV. of 1874) and the Laws Local

Extent Act (XV. of 1874).

(k) Mayne, "Hindu Law and Usage," para. 5.

(l) *Ibid.*, paras. 7—10.

has been either weak or non-existent, and that that influence has operated upon the joint family really as a destructive force. As regards succession, he shows that the Brahmanical idea that the right of inheritance is wholly regulated with reference to the spiritual benefits to be conferred on the deceased proprietor was not the primitive Hindu law, but a Brahmanical accretion to it, which, however strictly it may have been accepted in Bengal, "is no more the system of early India, or of the rest of India, than the English Statute of Distributions." The Brahmanical doctrine that every adoption is intended to rescue the soul of the progenitor from hell, and must be judged of solely by its efficacy for that purpose, is also stated to be a gloss of the same character on primitive Hindu law.

These views will be generally accepted by students of Hindu law as probably correct, at all events as regards Hindus of the lower castes and the denationalized Aryans who, in remote places, became fused with the aboriginal inhabitants of India. But it has also been observed that, from the moment when a conscious Hindu life was manifest in India, the tendency has almost invariably been towards assimilation of the Brahmanical system by the mixed classes. According to this view the primary source of Hindu law must be looked for in the customs and notions indicated by the Vedic hymns, and those common to the Aryan nations before their dispersion (*m*). As time went on, the Aryan immigrants into the Punjab were scattered to the east and to the south, and, in their wanderings, they no doubt acquired some practices from the indigenous population; but the converse process was more general, and there can be no question indeed that the Aryans were able to impose some of the more important of their own institutions on the people of the country. It has been held, therefore, that the substantial basis of the Hindu law is to be found in the development of the imported Hindu religion in alliance with Hindu philosophy, which could not have been borrowed from uncivilized tribes. The dominance of the religious factor is the marked characteristic of the Hindu legal system (*n*). According to Manu

(*m*) As to the dispersion of the Aryans, see Schrader, "Prehistoric Antiquities of the Aryan Peoples" (translation by Jevons), pt. i., chs. iii. and iv., and pt. iv., ch. xiv. See also

Hunter, article on "India" in "Encyclopædia Britannica," vol. xii., p. 779.

(*n*) West and Bühler, "Hindu Law," p. 54, note (*a*).

the fourfold sources of the law are (1) the Veda, by which is meant revelation (*śruti*); (2) the Institutes of the sacred law, known as the sacred tradition (*smṛiti*); (3) the customs of virtuous men, or, in other words, the virtuous conduct of those who know the Veda as a living illustration of the divine precepts; and (4) one's own pleasure, or self-satisfaction, that is, the self-satisfaction of the virtuous—the principle in fact of "freedom within the bounds of law" (o). To each of the most interesting transactions of human life the Brahmins gave a spiritual meaning, and then proceeded to find a divine source and sanction for rules framed by them for the needs and practices of the society in which they moved.

In the *Utpat* case, in which it was found that among the members of certain families in Pandharpur daughters are excluded, by a long and uniform family usage, from succession, the origin and growth of the rights of inheritance of the widow and daughter by general Hindu law were considered in the judgment of the Bombay High Court, which was delivered by Sir Raymond West. It was held that a family custom or usage, when clearly proved, outweighs the written text of the law. The greatest care must, however, be exercised in dealing with the evidence, which should distinctly show that the alleged custom has been submitted to as legally binding, and not as a mere arrangement entered into by mutual consent for peace and convenience; and any special rule of inheritance existing in a family, and proved to be ancient and uniform, should not be refused recognition if it appears further that it is reasonable and not repugnant to the fundamental principles of Hindu law (p). In *Mathura Naikin's* case, it was held by the same learned Judge that, although the Courts in India are bound by charter to recognise the "usages of the Gentus," they are not limited to the sole sense of the word "usage" which shuts out all amelioration. As the community comes to recognise certain principles as essential to the common welfare, it will no longer lend its sanction to sectional practices at variance with those principles. The coercive force of a custom or usage is regulated by the prevailing standard of the law, which, for the purposes of secular justice, must depend on the general sense of the Hindu community. Judicial decisions by which usages are recognised in India are not to be regarded in

(o) Bühler, "Laws of Manu," ch. ii., ss. 6, 10, 12, and note to s. 6.  
vol. xxv. of "Sacred Books of the East," (p) 11 Bom. H. C. R. 249.

precisely the same way as similar decisions in England, where a definite pronouncement by the Courts becomes, by that very process, a part of the common law, deriving its force from the custom of the realm or of the whole community. In India it is usage, as such, to which the Courts are commanded to give effect. A usage, even though judicially recognised, may be abandoned. A change in the legal convictions of the community, due to growing enlightenment, will induce a change in its common law; and any such change—when clearly ascertained—must, from time to time, be recognised and recorded by the Courts (*g*).

As to the operation of the Hindu law in British India, Sir Raymond West observes that, so far as it governed the private relations of the inhabitants of any part of India, that law was not affected by their reduction under British rule. But the new Sovereign thus acquired the right and power to legislate for Hindus. The application of the Hindu law to litigation in British India is authorised and regulated by various statutes of the Imperial Parliament and Regulations and Acts of the local Legislatures, and is subject, even without a statutory provision, to modification by custom, “which indeed may be regarded as the basis, for all secular purposes, of the Hindu law itself. Thus, when a custom is proved, it supersedes the general law so far as it extends; but the general law still regulates all that lies beyond the scope of the custom. The duty devolving, according to the Hindu sages, upon a conqueror, of maintaining the customary private law of the conquered territory, has been recognised as fully, or even more fully, by the British Courts than by the Legislature” (*r*).

Of the different schools of Hindu law which have arisen in British India the principal are those of Benares and Bengal. The Bombay school of Western India, the Dravida school of Southern India, and the Mithila school of the country to the south of Nipal, may be regarded as sub-divisions of the Benares school (*s*). Modern

(*g*) I. L. R. 4 Bom. 545. But see *Venku v. Mahalinga* (1888), I. L. R. 11 Mad. 393, in which the views of the Bombay High Court were dissented from.

(*r*) See West and Bühler, “Digest of the Hindu Law,” 3rd ed., Introduction, pp. 1 and 2, and the statutes and cases there cited. The discussion

is continued at pp. 3—9 of the Introduction, Part II. of which contains also an exposition of the sources of Hindu Law, and a full enumeration of the authorities on the written law in Western India.

(*s*) Markby, article on “Hindu Law” in “*Encyclopædia Britannica*,” vol. xxix., p. 277.

Hindu jurists insist academically on the supremacy of the "sastras" (*śruti* and *smṛiti*), but the practical law rests more immediately on the interpretations and deductions of the authoritative commentators whose works have, for their respective schools, been recognised by the Privy Council to be binding, as sanctioned by custom (*t*). Of the commentaries to which a quasi-legislative authority has thus been assigned the following are the principal: For the Benares school, the *Mitakshara* and the *Viramitrodaya*; for the Mithila sub-division of that school, the *Vivada Ratnakara* and the *Vivada Chintamani*; for the Bombay sub-division, the *Vyavahara Mayukha*, and the *Viramitrodaya*; for the Madras sub-division, the *Smṛiti Chandrika* and the *Madhaviya*; and for the Bengal school, the *Dayabhaga*, the *Dayatatva*, and the *Dayakrama Sangraha*. The *Dattaka Mimamsa* and the *Dattaka Chandrika* are the authorities or treatises most relied on by the Courts on the important subject of "Adoption," but these works are not assigned any special importance by Indian jurists. Though different schools of law have arisen in different provinces and a Hindu is ordinarily subject to the doctrines recognised in the province in which he resides, yet these doctrines must not be regarded as constituting merely a local law. They constitute a part of the Hindu's personal status. If he migrates from one province to another, he takes with him the law by which he was governed at the time of his migration. Nor does a Hindu family, or class, or sect, having peculiar customs lose them by migrating. A Hindu may, however, adopt the law of the province in which he settles (*u*).

**Muhammadan Law.**—The development of the Muhammadan law of British India is discussed in Sir Roland Wilson's "Historical and Descriptive Introduction" to his "Digest of Anglo-Muhammadan Law," and in an article by Sir Raymond West in the "Journal of the Society of Comparative Legislation" for April, 1900, on the origin and growth of Muhammadan law in India. In this article it is narrated that, during Muhammad's ten years of rule at

(*t*) See *Collector of Madura v. Mootoo Ramalinga* (1868), 12 Moore, Ind. App. Ca. 397.

(*u*) See *Vasudevan v. Secretary of State* (1884), 11 L. R. 11 Mad. 157; *Ambabai v. Govind* (1898), 11 L. R. 23 Bom. 257; *Rutcheputty v. Rajunder*

(1839), 2 Moore, Ind. App. Ca. 132, and *Sovrendronath Roy v. Mursamut Heeramonee Burmoneah* (1868), 12 *Ibid.* 81; also Ghose, "Principles of Hindu Law," p. 726; and Mayne, "Hindu Law and Usage," para. 48.

Medina, he had to decide a multitude of civil disputes. "Direct revelation from time to time came to his assistance. Its inspirations are enshrined in the Koran. His actions and words, equally authoritative when clearly established, constitute the Sunnat. From these two sources the whole Mohammedan religious and jural system has been evolved." The word "Sunna" (pl. Sunnat) signifies "manifestation or visible conduct, and the casual acts and events even of the prophet's domestic life have been made the basis for doctrines of momentous importance." Regarding the career of Muhammad and his successors reference may be made to Sir William Muir's works on the "Life of Mahomet" and "The Caliphate." Sir Roland Wilson, in his "Introduction," deals in detail with the part played by him as a law-maker, and with the several sects and schools in the Muhammadan system. There are two principal religious sects—the Sunni and the Shiah. The Shiahs represent the claims of Ali, the son of Abu Taleb, Muhammad's uncle, and the husband of his daughter Fatima, as against the Abbasside dynasty, the descendants of Abbas, also an uncle of the Prophet, who, unlike Abu Taleb, had readily acknowledged his nephew's prophetic claims. They reject the traditions received through the first three Khalifs, and regard Ali as the first lawful successor of Muhammad, both as Imam and as Khalif. The Sunnis maintain the rightful succession of the first three Khaliphs, and accept them as true sources of jurisprudence. While regarding Ali also as a legitimate successor of Muhammad, they do not deem him the "vicar of God."

There are sub-divisions of each of these sects. The Sunnis are divided into the schools of the Hanafites, the Malikites, the Shafaites, and the Hanbalites. The Hanafites were founded in the eighth century of the Christian era by Abu Hanifa, the characteristic feature of whose teaching was "reliance on the Koran itself, expanded by subtle interpretation." "The task he set himself was that of 'Islamising' the jural institutions of the Mohammedans, of founding them on a purely Mohammedan basis . . . Every principle, every rule, however minute, was referred directly or remotely to the sacred sources . . . From this time forward it has been recognized that, though a true Moslem may submit to a non-Islamic law through constraint, yet no such law has a moral claim on his obedience, nor can he obey it of choice without a risk of

eternal perdition" (x). In the hands of Abu Hanifa's successors, Abu Yusuf and Muhammad As Shaibani,—who are known as "the Two Disciples,"—the Hanafite doctrine received considerable development by the traditional method, which was the *raison d'être* of the Maliki school founded by Malik ibn Anas. This school extended its influence in the latter part of the eighth century along the north coast of Africa, and its teaching is still the foundation of native law and usage in Morocco and Algeria. The Hanafite teaching diffused itself through Turkey, Central Asia and India, where it co-exists to-day with the third of the Sunnite schools—the Shafaite—which was founded towards the close of the eighth century by Muhammad As Shafai, and represents a stricter orthodoxy than that embodied in the Hanafite teaching of Abu Yusuf and Muhammad As Shaibani. The fourth and last of the Sunni schools—the Hanbalite—was founded by Ahmad Ibn Hanbal in the early years of the ninth century, and was a reactionary school of a more pronounced character than the Shafaite. Its main tenet was the doctrine that the Koran was uncreated. But its influence had practically disappeared in most places before the Muhammadans invaded India, and it is said that now the Hanbalites survive only in Arabia (y).

The Shiah sect is subdivided into three sub-sects—the Zaidyas, the Ismailiyas,—who have not made any distinctive contributions to Muhammadan law,—and the Asna-Asharyas, or "Twelvers," so called "because they trace the legitimate succession to the Imamate through twelve known individuals, after which the existence of the Imam became a matter not of sight, but of faith" (z). They accept the example of their twelve Imams as a source of law. The sub-sect of Asna-Asharyas is again subdivided into two schools—the Akhbari and the Usuli. Shiahism has been the State religion of Persia since 1499. In India it formerly prevailed in Bijapur and Golconda, and now prevails in Oudh.

The Muhammadan conquerors of Hindustan left the Hindu law and custom to regulate the family law and law of inheritance of their Hindu subjects. Indeed, they went further, and, as is observed by Sir Raymond West in the article already referred to, they

(x) "Jour. Comp. Leg.," New Series (1900), ii., p. 33.

(y) See Wilson, "Digest of Anglo-

Muhammadan Law," ch. iii. of the Introduction.

(z) *Ibid.* ch. iv.

allowed the Hindus to settle all civil disputes among themselves by their own laws and their own tribunals. But when a case once fell within the scope of the public law, or had to be adjudged by a Muhammadan tribunal (as when a Muhammadan was a party), "no other law was applied, or could be applied, than that which alone the Mohammedan holds binding and superior to all merely rational considerations." The Muhammadans retained the administration of the criminal law in their own hands.

As regards the practical founders of the Hanafi school, Abu Hanifa, Abu Yusuf, and Muhammad, Sir Roland Wilson observes that they all profess to base their opinions on (1) some text of the Koran directly in point, or (2) some duly authenticated tradition as to what the Prophet said or did, or (3) some evidence as to the unanimous opinion of the companions of the Prophet, or (4) some inference, by way of analogy or otherwise, from one or other of the primary sources. "But," he adds, "for the purpose of ascertaining the proper rule for determining a civil suit in British India, the primary sources are of less weight than the secondary; in other words, the Courts are bound to accept the inferences drawn from the Koran and the traditions in the standard medieval text books in preference to what might appear to the judges a more correct inference. But again, these secondary medieval sources are of less weight (for the purpose aforesaid) than the previous practice of the Courts of British India. In other words, a judge is not at liberty to decide a point of law according to his own reading of a medieval Muhammadan treatise (the Hedaya, for instance), in opposition to a single decision of the Privy Council, or to a series of decisions of the High Court which he represents or to which he is subordinate" (a).

The three principal authorities on Muhammadan law, as now administered in British India, are the Hedaya, which was translated by Mr. Charles Hamilton in 1791; the Fatawa Alamgiri, a collection of the opinions of certain learned Muhammadans on points of law, which was compiled under the orders of the Emperor Aurangzib, and the Sirajiyah, a monograph on the law of Inheritance, dating from the fourteenth century of the Christian era, and translated by Sir William Jones in 1792.

Reference will be made in later volumes to various provisions of

(a) Wilson, "Digest of Anglo-Muhammadan Law," s. 16.



Hindu and Muhammadan law affecting particular subjects. It is right, however, to note here that, in administering the Hindu or the Muhammadan law, or the established customary law, in the cases coming before them, the Civil Courts of British India have, since the time of Warren Hastings, shown respect to the religious usages and institutions of the country. By rule 23 of the "Plan" devised by him, in 1772, for the administration of justice in the interior of Bengal, it was prescribed that "in all suits regarding marriage, inheritance, and caste, and other religious usages and institutions, the laws of the Koran with respect to Mahomedans, and those of the Shaster with respect to Gentus, shall be invariably adhered to." Provision was also made for the appointment of Muhammadan and Hindu Law Officers to attend the Courts (*b*); and, until the passing of the Indian Act XI. of 1864, Law Officers were attached to the chief Civil Court in each district in British India, and to the highest Courts of Appeal at the Presidency towns, for the purpose of expounding the Hindu and Muhammadan law. Legislative effect was given by the Government of Bengal to the above rule in a Code of Regulations enacted in 1780, and again in 1781, when suits regarding "succession" were also included in the rule; and its principle was affirmed in the latter year by the Statute 21 Geo. III. c. 70. By Bengal Regulation VII. of 1832 it was declared that the rule in question was to apply to such persons only as should be *bonâ fide* professors of the Muhammadan and Hindu religions "at the time of the application of the law to the case," and was designed "for the protection of the rights of such persons, not for the deprivation of the rights of others." Where parties to a suit should be of different religious persuasions, one being a Hindu and the other a Muhammadan, or where one or more of the parties should be of neither of these persuasions, then the Hindu or Muhammadan law was not to operate "to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled." In all such cases, the decision was to be governed "by the principles of justice, equity and good conscience; it being clearly understood, however, that this provision shall not be considered as justifying the introduction of the English or any foreign law, or the application to such cases of any rules not

(*b*) Ilbert, "Government of India," pp. 388—390.

sanctioned by those principles" (c). In s. 11 of his "Digest of Anglo-Muhammadan Law" Sir Roland Wilson observes that, "when it is said that the Muhammadan law is to form the rule of decision in cases where the parties are Muhammadans, it must be understood that, owing to the nature of the reserved topics, connected as they are for the most part with family relations, it cannot easily happen that the litigants should belong to different religions unless it be the case of a stranger claiming property through one member of a family against another member, and that, in such a case, the law applicable is that of the family within which the root of the title is confessedly to be found." For the older districts of the Bombay Presidency, s. 26 of Bombay Regulation IV. of 1827 directs that "The law to be observed in the trial of suits shall be Acts of Parliament and Regulations of Government applicable to the case; in the absence of such Acts and Regulations, the usage of the country in which the suit arose; if none such appears, the law of the defendant, and, in the absence of specific law and usage, justice, equity, and good conscience alone." In the Punjab, "which is pre-eminently the land of customary law," s. 5 of the Punjab Laws Act (d), as altered by s. 1 of Act XII. of 1878, directs the Courts "to observe any custom applicable to the parties concerned, which is not contrary to justice, equity, or good conscience, and has not been altered or abolished by law, or declared by competent authority to be void" (e).

**Buddhist Law.**—In questions regarding marriage, inheritance, and succession, the Civil Courts of Burma are directed, in the absence of Statute law or any custom of the country governing the case, to administer "Buddhist law" to Buddhists. The phrase is somewhat misleading, inasmuch as the Courts, in order to ascertain the law, have recourse, not to the sacred writings of the Buddhist religion, but to various treatises of Hindu origin, which are known as "Dhammathats," and are the Pali and Burmese equivalents of the Hindu "Dharma Shashtra," or sacred law. These compilations more or less resemble the famous Code of Manu. The earlier ones put the rules of law into the mouth of Manu, for whom the later ones substitute Gaudama Buddha. Dr. Emile Forchhammer expounds the view that these law books originated in India, and,

(c) *Ibid.*, pp. 391, 392.

(d) Act IV. of 1872.

(e) Ilbert, "Government of India," pp. 393, 394.

becoming the law of Hindu colonies on the Burman coasts, were adopted by the Talain nation several centuries ago. The Dhammathat bearing the name of King Wagaru of Martaban, who died in 1306, is held to have been an edict for that kingdom. During the eighteenth century, the Burman conqueror Alompra applied these codes to his empire, especially by compiling and promulgating, in 1756, the "Menu Kyay Dhammathat," which is the work chiefly used by the Courts. It is strongly infused with Buddhist theology, sentiment, and legend; and the Buddhists have thus been induced to accept it as a standard to be appealed to in litigation when the parties refuse such compromises as may be suggested by relations and village elders (*f*).

**Lex Loci Act.**—It must here be noted that, since the passing of the Indian Act XXI. of 1850, which has been styled (though inappropriately) the *Lex Loci* Act, the object of which was to extend throughout British India the principle of Bengal Regulation No. VII. of 1832, already referred to, no British Court in any part of British India can enforce the personal law of any party, or any usage, if it either inflicts on any person forfeiture of rights or property, or may be held to impair or affect any right of inheritance, "by reason of his or her renouncing, or having been excluded from the communion of any religion, or being deprived of caste."

In *Abraham v. Abraham* the Privy Council held that the *Lex Loci* Act does not apply where the parties have ceased to be Hindus in religion, and that the Regulations which prescribe that the Hindu law shall be applied to Hindus and the Muhammadan law to Muhammadans must be understood as referring to those who are Hindus or Muhammadans not by birth only but by religion also. Upon the conversion of a Hindu to Christianity, the Hindu law ceases to have any continuing obligatory force on him. He may renounce the old law by which he was bound, as he renounced his old religion; or, as the Judicial Committee held in that case, which was decided in 1863, he may abide by the old law notwithstanding his renunciation of the religion. The profession of Christianity, while releasing the convert from the trammels

(*f*) The origin and history of the Dhammathats are discussed in Sir John Jardine's edition of Father Sangermano's "Burmese Empire a Hundred Years Ago" and "Notes on Buddhist Law," and also in Forchhammer's "Jardine Prize Essay" and "Translation of King Wagaru's Dhammathat."

of the Hindu religion, does not of necessity involve any change of rights or relations in matters with which Christianity has no concern, such as rights and interests in, and power over, property. The convert, though not bound as to such matters, either by the Hindu law, or by any other positive law, might, prior to the passing of the Indian Succession Act in 1865, have shown by his course of conduct by what law he intended to be governed. He might do so either by attaching himself to a class which, as to such matters, had adopted and acted upon some particular law, or by having himself observed some particular family usage or custom (*g*). The case of *Abraham v. Abraham*, where the parties were native Christians, not having, as such, any law of inheritance defined by statute, was distinguished in *Jowala Buksh v. Dharum Singh* (*h*) from that of a Hindu family, which, though converted to Muhammadanism, had retained for several generations Hindu customs and usages; but the question whether such a family could, by virtue of such retention, set up for itself a special and customary law of inheritance was not decided in this case. Native Christians are now governed by the Indian Succession Act (*i*), if the will was made, or the intestacy occurred after January 1st, 1866 (*j*). So lately as in 1899 a case came before the High Court at Bombay to which the principle of the decision in *Abraham v. Abraham* was applied because the intestacy had occurred in 1855 (*k*). Sir Roland Wilson observes that, in those provinces "where the Legislature has not made special provision for the recognition of custom, the weight of authority is adverse to the retention of Hindu civil usages (*e.g.*, rules of inheritance) by families converted to Muhammadanism; while the Courts have not been called upon to deal with any case similar to those of the Khojas and Memons in Western India, of practically immemorial usage observed by a considerable community" (*l*). In Bombay, the Khojahs, who are Muhammadans, but were originally Hindus,

(*g*) 9 Moore's Ind. Ap. Ca. 195, 239, 240. See also the remarks of Lord Westbury in *Barlow v. Orde* (1870), 13 Moore's Ind. Ap. Ca. 277.

(*h*) 10 Moore's Ind. Ap. Ca. 511.

(*i*) Act X. of 1865.

(*j*) See the case of *Joseph Vathiar of Nazareth* (1872), 7 Mad. H. C. R. 121;

*Ponnusami v. Darasami* (1880), I. L. R. 2 Mad. 209; and Mayne, "Hindu Law and Usage," para. 56, note (*n*).

(*k*) *Lastings v. Gonsalves* (1899), I. L. R. 23 Bom. 539.

(*l*) See Wilson, "Digest of Anglo-Muhammadan Law," p. 121, and the cases there cited; also the note to s. 11.

maintained, after their conversion, an order of succession opposed to the Koran. Sir Erskine Perry held that such order of succession could be supported (*m*). But though adherence to the religion of the Koran does not necessarily entail an adherence to its civil law, there may be cases where religion and law are inseparable. In such cases any one who had adopted the religion would be debarred from relying on a custom opposed to the law. For instance (as observed by Mr. Mayne), as monogamy is an essential part of the law of Christianity, a Muhammadan or Hindu convert to Christianity could not, after his conversion, marry a second wife during the lifetime of the first. The issue of such a marriage would not be legitimate, any Hindu or Muhammadan usage to the contrary notwithstanding, though the conversion would not invalidate marriages celebrated, or affect the legitimacy of issue born, before the conversion. For the case of a conversion of one of two spouses there are special laws of divorce which are applicable where continued association is refused (*n*).

**The Hindu Widow Remarriage Act.**—Another important modification of the Hindu law by the Legislature of British India should here be noted. By s. 1 of Act XV. of 1856 the remarriage of Hindu widows is legalised, any custom or any interpretation of Hindu Law to the contrary notwithstanding. In the preamble to the Act it is set forth that, by the law, as administered by the Courts, widows, with certain exceptions, are held to be incapable of contracting a second valid marriage, and that their offspring by such a marriage are held to be illegitimate and incapable of inheriting property; that many Hindus believe that this imputed legal incapacity, though in accordance with custom, is not in accordance with a true interpretation of the precepts of their religion; and that the removal of all legal obstacles to such remarriage will tend to the promotion of good morals and to the public welfare. Under s. 2 of the Act the right of a widow in her first husband's property ceases on her remarriage (*o*).

(*m*) Perry, Or. Ca. 110. See also *Bai Baji v. Bai Santok* (1894), I. L. R. 20 Bom. 53, 57, and the other cases cited in the notes to Mayne's "Hindu Law and Usage," para. 58.

(*n*) Mayne, "Hindu Law and Usage," para. 58. See also Ghose,

"Principles of Hindu Law," pp. 727—730.

(*o*) See West and Bühler, "Digest of the Hindu Law," pp. 387, 413, 415; and Ghose, "Principles of Hindu Law," pp. 206, 590, 612.

**Personal Law of Natives of India not Hindus or Muhammadans.**—As regards natives of India who are neither Hindus nor Muhammadans, the tendency has been to leave them in the enjoyment of their family law, except so far as they have shown a disposition to place themselves under English law (*p*). The principle of the rule laid down by Warren Hastings in 1772 has, therefore, been widely applied; and thus, as has been observed by Professor Holland, a similar phenomenon may be seen at the present day in British India to that noticed by Bishop Agobard, after the barbarians had established their government on the ruins of the Roman Empire, when it might often happen that “five men, each under a different law, would be found walking or sitting together.” As regards certain important matters, the development of the law of British India has not yet passed the “personal” stage, at which the law is addressed, “not to the inhabitants of a country, but to the members of a tribe, or the followers of a religious system, irrespectively of the locality in which they may happen to be” (*q*).

**Application of British-Indian Codes.**—In administering criminal justice and applying rules of evidence and procedure to judicial proceedings, whether civil or criminal, and also, as regards certain civil matters formerly dealt with in accordance with the personal law of the parties, the Courts are now, as a rule, guided by the several British-Indian Codes. By s. 2 of the Indian Evidence Act (*r*), all rules of evidence not contained in any Statute, Act, or Regulation in force in any part of British India, were repealed, as from September 1st, 1872. This section had the effect, as pointed out by Sir Henry Cunningham, in his edition of the Act, of repealing the whole of the English common law on the subject of evidence so far as it was in force in British India. It has been recognised by the Privy Council that the decisions of the English Courts on points of evidence have now no binding force on the Courts of British India (*s*). They can be referred to only for the purpose of explaining or illustrating the Act of 1872. Nor are the Courts now bound by any rules of evidence prescribed by the Hindu or the Muhammadan law.

(*p*) Ilbert, “Government of India,” pp. 393, 394; see also *Barlow v. Orde*, 13 Moore’s Ind. Ap. Ca. 277.

(*q*) Holland, “Elements of Juris-

prudence,” p. 401.

(*r*) Act I. of 1872.

(*s*) *Rani Lekraj Kuar v. Mahpal Singh* (1879), L. R. 7 Ind. Ap. 63, 70.

**Rule of "Justice, Equity and Good Conscience."**—When, in deciding disputes, the Civil Courts of British India can obtain no help or guidance from legislative enactments or religious text-books, or other recognised authorities, they are usually required to act in accordance with "justice, equity, and good conscience." In other words, they ordinarily apply, in such matters, such rules and principles of English law as they find to be applicable (t).

(t) Ilbert, "Government of India," p. 394.

## CHAPTER III.

### ROMAN-DUTCH LAW.

#### I.—IN HOLLAND.

**Roman-Dutch Law.**—The introduction of the civil law into Holland, its fusion with the native German law and their development into the Roman-Dutch system, which forms the basis of the law throughout South Africa, Ceylon and British Guiana, require special notice. The common law of the countries which afterwards formed the seven Provinces of the Dutch Republic is undoubtedly based on the customary law of those tribes—of Germanic origin—who at an early period settled in the Low Countries. The more important among them, those who stamped their mark on the generations that were to follow, were, roughly speaking, in the north, north-west and west, the Frisians, along the Rhine and in the south, the Franks, and more especially the Salic Franks, and in the east, the Saxons.

(A.) **Early German Law.**—The law recognised by these German tribes was customary law, handed down in formalities, easy rhymes and proverbial sayings, and known by all free men whose obligation it was to attend the popular Courts and take part in their work. The Courts were open assemblies of the free men in each tribe, presided over by a judge whose principal duty it was to conduct the proceedings and to “ask the law” from the assembled free men. Very probably these gave their verdict after it had been proposed to them. Judgment was given by the judge in accordance with the verdict (a).

Each tribe had its own customs.

(B.) **Frankish Period.**—The ascendancy of the Frankish kingdom under Clovis and his descendants during the seventh, eighth and ninth centuries brought the different tribes under one ruling power, and supplanted the Roman Empire in Western and Southern Europe. Though its kings did not attempt to break the rule that each tribe should live under its own customs or to introduce

(a) H. Brunner, “Grundzüge der Deutschen Rechtsgeschichte,” 1903, p. 17.



unification of law by means of their *capitularia*, it cannot be denied that the customs of the Franks had great influence and were followed by a number of tribes living in the territory over which they held sway (b). A leading part was taken by that portion of Frankish law called Salic law, and afterwards by the Ribuarian law (b).

**German versus Roman Law.**—The influence of the law of the Germanic tribes even in those regions where a Roman population lived (e.g., the South of France) was very marked. The Roman law in those parts was not the pure civil law of the Empire. It was bastardised and made to suit the requirements of time and circumstance. On the law so handed down, specially family law and the law of obligations, the Germanic customs made an inroad. On the other hand, the Visigoths and the Burgundians took over from the Romans with whom they came in contact certain ideas and institutions which they adopted, and developed in accordance with their own customs.

The civil law was the law for the Roman population in the Southern parts of the Frankish kingdom and for the Church. The large number of written laws and commentaries rendered it necessary to make summaries. For this reason Alaric II., in 506, promulgated the *Lex Romana Visigothorum*, or *Breviarium Alaricianum*, which consisted principally of extracts from the Code of Theodosian, the *Novellæ post Theodosianæ*, the *Libri Gaii*, *Sententiæ Pauli*, *Constitutions* out of the *Codex Gregorianus et Hermogenianus* and one from the *Responsæ Papiniani*. At the same time the use of all other codifications was forbidden.

It lost its authority in the following century during the reign of Recessvind (649-672), who replaced it by his own codification of the law of the Visigoths, but it remained to a great extent in use among the Romans who lived in the Frankish kingdom. In Burgundy it remained in force together with and finally replaced the *Lex Romana Burgundionum* (c).

It is impossible to go beyond this point, or to say that its influence extended to the northern countries. The Roman law never supplanted the tribal customs, and never became the common law of the land. Its influence was slight in comparison with the influence of the Frankish law on the customs of the different tribes under

(b) H. Brunner, *ibid.*, p. 32, and authors quoted on pp. 33 and 34. geschichte," I, p. 356. "Grundzüge der Deutschen Rechtsgeschichte," p. 50.

(c) H. Brunner, "Deutsche Rechts-

Frankish rule. Outside the southern parts of the Frankish kingdom the civil law did not gain a foothold, and with the downfall of the Visigoths it ceased to have any influence at all.

**Legislation.**—In its development the law followed on the one hand the path laid down by custom, on the other it was shown its way by royal legislation. The former, the customary law which originated in the people's Courts, was called the people's law. The latter, the royal legislation, which consisted of administrative rules and royal decrees, and which partly completed, partly opposed, partly displaced the people's law, was generally called the King's law. It reached its highest development in the King's Courts where, through the extraordinary judicial power of the King, a number of new rules were made which remained foreign to the people's Courts.

The written law was found in (1) *leges*, which may be characterised as collections, compilations, or codifications containing the common law of the country, in (2) the *capitularia* of the kings and in (3) the collections of *formulae* and deeds (*d*).

Most prominent among the common law collections is the *Lex Salica*, containing the laws of the Salic Franks and made during the reign of Clovis. Another, the *Lex Ribuaria*, containing the laws of the Ribuarian Franks and dating from before 596, was never in force in the Low Countries.

The Saxons had their *Lex Saxonum*, which dated from different dates previous to 782 and 796, but was sanctioned in 802 at the Reichstag of Aix-la-Chapelle, where Charlemagne insisted on every tribe adopting a written law for its own guidance, where it had not one already (*e*).

The Frisians had their *Lex Frisionum*. The text thereof was settled by public authority and then declared law at the Reichstag of Aix-la-Chapelle, if not earlier.

The *Lex ad Amorem*, also called the *Ewa Chamavorum*, contained Frankish law. It is difficult to fix the frontiers of the tribe with whom it was in force, but it is said that this "written law" prevailed with the population living between the Maasgou, the Frisians and the Saxons. Very probably it too owed its birth to the Reichstag at Aix-la-Chapelle.

(*d*) H. Brunner, "Grundzüge der deutschen Rechtsgeschichte," § 13, pp. 34 *et seq.* S. J. Fockema Andreae,

"Het Oud-Nederlandsch Burgerlijk Recht," 1906, Introduction, p. 2.

(*e*) H. Brunner, *ibid.*, p. 38.

King's laws or capitularia were divided into capitula legibus addenda or pro lege habenda, capitula per se scribenda and capitula missorum. The leges and the capitula legibus addenda (which very probably were constituted with the people's co-operation) were binding on the people's Courts, the capitula per se scribenda and the capitula missorum on the King's Courts only (*f*).

Besides these there existed collections of formulae which contained forms for royal decrees and private deeds (*g*).

At the end of the ninth century, the Frankish kingdom was split up into East- and West-Francia, and the development of the law in the two parts followed its own lines in each. In the eastern and southern parts of Europe, including France and Italy, the study of the law and law books, codifications and compilations remained a sacred study, and was confined within the walls of the monasteries and the universities. In the western and northern parts, including the Low Countries, the leges and capitularia became out of date and were forgotten. Differences between King's law and people's law disappeared, and a return was made to the customary law as known among the people orally.

(C.) **Period of the Growth of Independence of the Courts in the Low Countries.**—Already in the Frankish period divisions of the kingdom had their own customs, and were allowed to keep them. Instead of leading to uniformity this led to particularisation of the law in the different groups.

The want of a uniform legal system and the existence of numerous independent Courts favoured this tendency, and when the rise of the power of the King's (afterwards the Emperor's) representatives, the Counts, and their gradual disregard of the supremacy of their masters, led to the formation of small independent states within the Empire, the law in each of such states formed a separate territorial law different from the general tribal law from which it nevertheless originated.

The King's Court was unable to cope with these difficulties, and no longer retained the influence which it had in the Frankish kingdom. The development of the local customs sanctioned by the local Courts was too strong to be overruled by its decisions.

The development of the law in the Low Countries followed the

(*f*) H. Brunner, *ibid.*, pp. 38—40.

(*g*) H. Brunner, *ibid.*, pp. 40—42.

same course as in other parts of the Empire. Each duchy, each county, each seignior had its own history, and each its own development, its own laws and customs.

In addition to the separate territorial laws new jurisdictions arose over disputes regarding certain relations in law or regarding particular classes of the population (*h*).

In feudal courts all differences regarding feudal relationship were heard, the overlord acting as judge, and the liegemen giving the verdict.

Differences arising between and with tenants of rural holdings (*hoorigen*) regarding their mutual relationship, points of manorial law (*Hofrecht*) and manorial holdings, were heard in the manor courts of the landlords, the steward being judge and the tenants giving the verdict according to manorial law (*i*).

The noblemen (*welgeborenen*) had a "forum privilegiatum," either by having their own Courts, or by being exclusively called before such Courts as consisted of noblemen only or before the highest Courts (*k*).

With these there remained the public Courts of the counts and of the hundreds, administering justice in accordance with the "land-rechten"—rural laws.

Side by side and keeping pace with the increasing importance and development of the towns, there grew up a special Court of the town for the decision of all disputes with the citizens, and with it developed the town rights or laws, "stadrechten"—civic laws. The sources of these laws of the towns, like those of other groups, *e.g.*, "baljuwschappen," "schoutambten," "dykgraafschappen," and seigniories were two-fold.

First of all they were based on privileges granted by the higher authorities, the privileges generally consisting of a recognition of the customs of the town, together with a promise that those customs would be maintained, or that new rules would be authorised. The privileges and rules so granted and recognised, obtained the name of "handvesten"—charters.

In the second place the town councils obtained the right to make

(*h*) H. Brunner, *ibid.* p. 93.

(*i*) Fockema Andrus, *ubi cit.* pp. 38—39; "Bijdragen tot de Nederlandsche Rechts-geschiedenis," vol. iii., p. 64.

(*k*) H. Brunner, *ubi cit.* p. 93; Fockema Andrus, "Het Oud-Nederlandsch Burgerlijk Recht," pp. 31—32.

rules and regulations, these being contained in "keuren" which may be defined as orders made in virtue of autonomous authority, either original or derived. The field for these "keuren" was, however, limited. Originally, the right to make them was subject to several restrictions or conditions, *e.g.*, the co-operation of the servants of the count or the representative of the Sovereign, approval by the count or recognition by the town of the count's rights and placards. On the other hand their provisions could not extend beyond town affairs ("stads oerboir") such as matters of commerce and town police. For others they required the sanction of the authorities (*l*).

Similar were the powers granted to the servants of the Crown in the country and their "keuren" and ordinances (*m*).

Besides these laws applicable to towns or country, there were the personal privileges granted to certain classes of the population, for equality before the law did not exist.

All these different feudal, rural and civic laws were collected in books, which formed compilations of the laws prevailing in those particular parts of the country, and which are of great importance for understanding the development of the law there.

These are in the first place the books of Charters and Placards ("Oorkonden-, Charter-, and Plakkaatboeken") of the different provinces, containing privileges granted by the King or the Count or Lord ("landsheer" or "heer"), and mostly consisting of customary law.

Further, they are (1) the collections of customs and "keuren" of the towns and other jurisdictions; (2) such collections of old judgments as have been preserved; (3) collections of charters and formulae; (4) legal writings and draft codes for towns and counties; and (5) the royal ordinances.

These were the sources of law in the Low Countries at this period of their legal history (*n*).

(*l*) Cf. for the town laws development, Fockema Andressé, *ibid.*, pp. 53—77; Brunner, *ubi cit.*, pp. 113 *et seq.*, pp. 148 *et seq.*, and authors quoted on p. 153; Grotius, "Introduction," I., 2, 18; Grotius, "Observationes," I., 3, and the authors quoted; "Hollandsche Consultation," vol. iii., Cons. 185, Nos. 5 and 6, Grotius, "De Jure Belli ac Pacis," I., 4, 6, 1; Van Leeuwen, "Roman-Dutch Law," I., 3, 9; J. Voet, "Commentarius ad Pandectas," I., 3, 42; v. Zurck, "Codex Batavus" voce "Wetten," par. 4; Merula, "Manier van Procederen," I., 4, 6.  
 (*m*) Grotius, "Observ." I., 4.  
 (*n*) Fockema Andressé, "Het Oud-

(D.) **Period of the Republic of the Netherlands.**—Centralisation among all these different sources of law was difficult. The authority which the King possessed in the Frankish period had lost much of its strength. The great number of privileges granted in different form and to different groups and individuals reduced the sphere of the Sovereign's authority and that of his Counts. This is one of the reasons which explain the limited number of subjects treated of in their placards. A serious attempt to restore the King's power was made during the short period covered by Charles V.'s reign, when all the different countries constituting the Netherlands were united under one ruler, and the few years of Philip II.'s sovereignty (*o*). After the abjuration of Spain in 1581 the representatives of the different "Standen"—called the States—assumed the authority which they had before attempted to wrest from the Counts (*p*), but the States were loth to interfere with local authorities, and only did so by legislation in cases of great uncertainty or absolute chaos.

Another obstruction in the way of central legislation was the principle that former privileges could not be overruled by privileges granted subsequently. The respect to be paid by later legislation to what had been made law previously, to rights which were already in existence, was often the cause that attempts to centralise were shipwrecked (*r*). Moreover, all laws and privileges had to be published before they came into force. Such publication had to be local—which was far from conducive to generalisation, though much in harmony with the idea of non-interference with existing privileges (*s*).

Besides these sources of written law, the customs of the people retained their force: not only creating unwritten or customary law, but also abolishing by disuse existing law (*t*).

Nederlandsch Burgerlijk Recht," Introduction, pp. 2—6, where the principal collections are enumerated.

(*o*) Firstly, by legislation — ordinances—and secondly by subordinating the Courts of the different countries to one Supreme Court of Appeal at Mechlin.

(*p*) Resolution, 1587. Van der Houve, "Handvest Chronieken," I., 12; Grotius in "Holl. Cons.," vol. iii.,

Cons. 226, ss. 1—3 *et seq.*; Fockema Andress, "Introduction of Grotius. Notes," II., 1, 2, 17.

(*r*) Grotius, "Introduction," I., 2, 20, and "Notes" by Fockema Andress, *loc. cit.*; "Observ.," I., 5; "Observ.," III., 5; "Apologia," p. 148

(*s*) Fockema Andress, "Notes," II., 1, 2, 1 and 1, 2, 20, pp. 4 *et seq.*

(*t*) Grotius, "Introduction," 1, 2, 21. Van der Keessel, "Theses Selectas,"

These customs can be ascertained from legal literature and jurisprudence, from declarations made by a number of persons for particular cases and called "turben," and from official collections of customs.

Several orders for such official collections were given, *e.g.*, by Charles V. (1531, 1540, 1548 and 1551), and by the Duke of Alva (1569). Again, a general order for a collection of customs throughout all their territories was made by Albrecht and Isabella (the Archduke and Archduchess) in 1611 (*u*).

These periodical collections of existing customs appear to have served to mark stages in the evolution of customary law but not to have checked its growth, for the collections continued to be made from time to time until well into the eighteenth century (*u*).

The characteristics of this period, which is not clearly distinguishable from the previous one, consist (1) in the endeavours (more or less successful) of the Provincial States to codify and by codification to bring uniformity into the laws and customs of each province; (2) in (a) the jurisprudence of the Courts of Appeal and (b) the increased influence of the lawyers through whom the Roman law made itself felt.

(1.) **Provincial Codifications.**—The provincial codifications are found in the different "Landrechten," viz. :—

Friesland: "Statuten, Ordonnantien en Costumen" of 1602 and 1728.

Groningen: "Landrecht der Ommelanden," 1601; "Landrecht der Oldambten," 1618; "Landrecht van Selwerd," 1678; "Landrecht van Wedde en Westerwolde," 1567.

Drenthe: "Landrechten" of 1608, 1614 and 1712.

Overijssel: "Landrecht" of 1630.

Gelderland: "Gereformeerd Landrecht van Veluwe en Veluwezoom," 1604; "Gereformeerd Landrecht van Zutphen," 1604; "Gereformeerd Landrecht van de vier Bovenambten van het Kwartier van Nijmegen," 1686; "Landrecht van Tieler-en Bommelerwaard," 1721; "Stad- en Landrecht van Culemborgh," 1680 and 1742; "Gelresche Landt- en Stadtrechten in het Overkwartier van Roermond," 1619.

Utrecht: "Ordonnantie decisoir" of 1659.

Thes. v.; Schorer, "Notes Introd. Grot.," note vi., Maasdorp's edition.

(*u*) Fockema Andreae, "Notes," II., 1, 2, 21, and authors quoted.

Holland: "Politieke Ordonnantie" of 1580.

Zeeland: "Landrecht" of 1496; "Politieke Ordonnantie" of 1588 (y).

(2.) (a) **Influence of the Courts. Early History.**—In order to understand clearly the influence which the Courts exercised, it will be necessary to trace their development from the earliest period. If we view their history, it is not surprising to find that—though they had to do justice according to various laws and customs—in the beginning they leant towards customary law. As pointed out before, the Frankish Courts were the people's Courts, and hence the predominance of usage.

The Courts were divided into:—(1) "Real Courts" ("echte dingen"), which had jurisdiction in all matters and were presided over by the "thunginus," and attended by all heads of families within the tribe; (2) "Courts of the hundreds" ("geboden dingen"), which do not seem to have had power beyond the sanctioning of legal formalities. The latter were presided over by the "thunginus" or the "centenarius," and were attended by the heads of families within the "hundred."

Gradually a change took place. Certain men came to the front and assumed jurisdiction. They were called the "rachimburgii." It became the duty of seven of these to sit as judges ("rachimburgii sedentes"), and these were bound to give judgment. In the larger Courts ("echte dingen") it was the duty of these seven to propose judgment, which had then to be affirmed by the others assembled ("rachimburgii circumstantes").

At the same time the "thunginus" disappears, and his place is taken by the King's representative, the Count. About the time of Charlemagne these Courts were regulated and placed on a permanent footing.

The population had become more settled, and regular attendance at the Court by all heads of families had become difficult and burthensome. The "rachimburgii" disappeared, and to take their place there were created "scabini," or sheriffs, who were chosen as permanent judges by the King and the people, probably for life. They exercised full jurisdiction in the smaller Courts ("geboden dingen"), to which they alone were called.

(y) Fockema Andreae, "Het Oud-Nederlandsch Burgerlijk Recht," Introduction, p. 7.



These Courts were held every fortnight, and were presided over by the Count or the "centenarius." Their jurisdiction was limited.

In the larger Courts, the "Real Courts" or "echte dingen," the "scabini" very probably acted as the "rachimburgii sedentes" did previously, viz., as proposers of the judgment.

"Real Courts" were held twice or three times a year by the Count, as representative of the King. Over these Courts he presided, and to these all "dingplichtigen" (those whose duty it was to attend the Courts) in his county were called at least twice a year. The jurisdiction of these Courts was unrestricted. The "dingplichtigen" acted as a jury and gave the verdict.

Besides these, the King had his own Court, the King's Court, which had no fixed domicil, but was held where the King was himself, and was presided over first by him in person, afterwards—though the King remained *de jure* the presiding judge—by his representative (under the last of the Merovingian kings the "hofmeier," later the "comes palatii"). The members of the Court (not less than seven in number) were the "assessores"; they were royal dignitaries, bishops, "optimates," "fideles" or "scabini." The decisions were also given by the members of the Court and not by the King.

**Development of the Courts in the Netherlands.—General.**—The development of the Frankish Courts in the countries which afterwards formed the United Provinces of the Netherlands was different, not only in each province, but even in the several counties of which each province was composed.

During the Middle Ages the influence of the King's Court disappeared in all the provinces, and the people's Courts came into the foreground. In these, however (in some provinces sooner, in others later), the participation of the people ceased to be a direct one except in Drenthe, where it continued until the end of the Republic. It was the custom that after the case had been heard the judge handed the record to one of the assembled bystanders, called "ordelwijzer," who had some time to prepare his "ordel." After he had given his "ordel" in Court, that is to say, had proposed the verdict, those who were assembled expressed their approval or disapproval, and, if approved, the "ordel" formed the decision of the Court, and judgment was given accordingly.

This rendering of verdicts—after attendance of courts by the

ordinary members of the community had become a thing of the past—came gradually into the hands of a special class, the “schepenen” or “scabini,” or sworn men, or those who were accustomed to take a leading part in the proceedings.

The final step, after the Middle Ages, was the participation of lawyers, either as advisers (or “pensionarissen”) to these courts of laymen (as in Friesland) or as the impartial persons in whose hands the record was placed by the “ordelwijzer” for opinion. As a rule, their opinion was unreservedly adopted and read in court as the verdict proposed by the “ordelwijzer,” and formed the judgment of the Court.

The latter proceeding could be varied according to circumstances. For example, the documents of the case in a sealed packet were secretly handed over to an impartial lawyer who was admitted to practise within the court’s jurisdiction. The lawyer wrote his opinion on the case and formulated the decision, which he signed. The documents, together with this opinion, were thereupon—again in a sealed packet—handed back to the president of the Court, and the judgment was then pronounced on the day fixed for it.

In the provinces of Holland and Gelderland in the old courts of the Counts (the “Real Courts” or “echte dingen”), the noblemen and representatives of the towns came to be the “dingplichtigen.” Gradually the attendance of these men grew less, and the jurisdiction was left to a few only who had come to the front.

Another characteristic (of Frankish origin) of these courts was the possibility of appeal. This gradually led to the establishment of courts of appeal or Supreme Courts, councils consisting of official members appointed by the supreme authorities, that is to say the Count, and afterwards the Stadtholder, or the States.

These courts of appeal had a purely juridical character. The jurists or professional lawyers were in the majority, or had at any rate the greater influence.

**Constitution of the Courts in each Province.**—Before entering upon the question of the influence of the Civil Law, it is necessary to review shortly the condition of the courts in each of the Northern Provinces, which formed afterwards the United Netherlands, during the period from the sixteenth to the nineteenth century. It is, however, impossible here to do more than give an outline of the situation in each Province.

In Friesland the ordinary courts were those of the "grietmannen," who were nominated by the central authority. These courts were the "Real Courts" ("echte dingen") of the Middle Ages, and as the "grietmannen" and their assessors were, as a rule, laymen, they were guided by the opinion of a lawyer. Most of these courts had in later time a "pensionaris" among the lawyers of the appeal court. The "grietman" appointed village judges, who instituted inquiries, but were not entitled to hold a court. Above these courts was the Court of Appeal, created in 1499 and afterwards developed into a most influential court, which, through the absence of rivalry and the adoption of Roman law as the common law of the province, brought about unity of jurisdiction and in many points unity of law (z).

The Court of Appeal consisted in the beginning of the sixteenth century of one president and six members, and in the beginning of the seventeenth century of twelve members. At the end of the eighteenth century eight of them were professional lawyers.

In Groningen a similar unity did not exist. This province comprised the Ommelanden and the town of Groningen with its three seigniories.

In the Ommelanden the ordinary courts were those presided over by a "redger," and this dignity, which belonged to particular farms or estates, was held by the owners in consecutive order. Appeal lay to the "mene warven," a collective body formed by all the "redgers" of the district. In one part of the Ommelanden the lowest courts were the village courts.

In the town of Groningen jurisdiction was in the hands of a court formed by the "schout" and the members of the town council, or by the burgomaster and the members of the council. Appeal lay to the full court. The seigniories had either the court of the "drost" appointed by the burgomaster and council of Groningen, or the court of a judge appointed by the "heer," and from this court appeal lay in civil cases to the court of the "drost," or they had the court of an "ambtman," with appeal to the

(z) The characteristic feature of the Frisian law is its gradual and continuous development from ancient date. The introduction and reception of Roman law dates from the 15th century.

Fockema Andreae, "Bijdragen tot de Nederlandsche Rechtsgeschiedenis," iv., pp. 86—88, and authors quoted by both.

"hoeftding," and a second appeal to the burgomaster and council of the town of Groningen.

After the treaty of 1428 between the Ommelanden and the town of Groningen, it was decided that the "mene warven" would be formed by the "redgers" of the Ommelanden and the "hoofdmannekamer," which was definitely formed in 1515, and which gradually developed into a court of appeal, from 1749 called the "Hooge Justitiekamer," or High Chamber of Justice.

In Utrecht, where the bishop transferred all temporal power to Charles V. in 1528, the different counties possessed: (1) the "schouten," or "schepengerichten," lower courts of sworn persons, which were elected annually, and heard all civil cases in the first instance; (2) "stedelyke gerechten," or courts of the towns, which had all criminal jurisdiction; (3) the "Landrecht," or court of the bishop, presided over by the bishop (with nobles as judges), to which appeal lay from the lower courts; and (4) the "Oversten Raad," created as a court of appeal by Charles V. in 1530, and which developed into the Hof van Utrecht in 1583, when it took the place of the bishop's court, or "Landrecht."

The absence of written law and, until a comparatively late period, of collections of customs gave the courts a great influence upon the development of the law.

In Overijssel, where also the Bishop of Utrecht transferred his temporal powers to Charles V. in 1528, there existed: (1a) the "kerspelgerechten," or "schoutenbank," which formed the lower court, and where the judge ("richter," "schout," "ambtman" or "drost") acted as *director judicii*, and judgment was rendered by "ordelwijzers"; (1b), the "hooge bank," or court for the nobility; and (2) the "klaring," or court of appeal, which was held at Deventer, first twice a year, but after 1630 once annually.

Twice attempts were made to establish a central court of appeal like the Hof van Utrecht, first by the bishop, secondly by Charles V. in 1553, but both attempts failed.

In Drenthe there existed: (1) the "dingspelgerecht," (2) the "kerspelgerecht," and (3) the "etstoel." (1) The inferior court was the "dingspelgerecht," or "Real Court," for each of the six counties ("dingspelen") into which the province was divided, and this court had to be attended by the neighbours, that is to say,

probably one male person out of every house. The costs had to be paid by them. As these expenses became heavy, the result was that the neighbours paid a lump sum down in order to be relieved of the duty of maintaining these courts. In their stead extraordinary courts ("geboden dingen") were then held, called "Goespraecke," of which the expenses were paid by the "drost" or judge. In these courts the neighbours continued to pronounce final judgment. In 1652, however, a change took place. Instead of the neighbours, representatives of the villages attended the "Goespraecke," and these no longer pronounced final judgment, but prepared the record or "bewijsordel." This was then carried to the "etstoel," which gave final judgment. The "Goespraecke" for a long time had jurisdiction in civil and criminal cases, but in 1608 the criminal jurisdiction was taken over by a court composed of the "drost" and six "etters," or representatives, one "etter" out of each "Dingspel."

(2) The "kerspelgerechten" were the courts of the "kerspelen" into which each "dingspel" was divided. They consisted of the neighbours of the "kerspel," and were presided over by the "schout." Gradually their jurisdiction was taken over by the "etstoel."

(3) The "etstoel," which consisted of twenty-four "etten," chosen by the bishop, together with representatives from each "dingspel," and was presided over by the "drost," acted first as a court of appeal, but afterwards all verdicts ("ordels") were brought to it from the lower courts in order that judgment might be pronounced by the "etstoel."

Gelderland was divided into five counties, each of which had its own peculiar courts. On the Veluwe and Veluwezoom were: (1) the "Real Courts" ("echte dingen"), presided over by the "drost" or "richter," from which appeal lay to (2) the "klaringen," or courts of appeal, which were presided over by the lord of the land. In the county of Zutphen the civil jurisdiction was exercised (1) by the courts of the "drost," "schout" or "richter," and (2) by the "Real Courts," which were presided over first by the Count, afterwards by the "drost." The criminal jurisdiction was exclusively in the power of the "Real Courts." Appeal did not at first exist, but lay after 1604 to the "klaring." In the county of Nijmegen the "Real Courts" were presided over by the "burggraaf," the "ambtman," the "drost" or the "schout." They had civil and criminal jurisdiction. Appeal was differently regulated in the different districts, and lay

often to the same court which had given judgment, or to the "klaring." In some districts there was no appeal at all. In the county of Buren there were village courts presided over by a "schout," and from these appeal lay to the "hoofdbank," presided over by the "drost." In Roermond there were sheriffs' courts, from which appeal lay to the "Hof van Roermond."

All these courts were people's courts, and the procedure involved a reference to "ordelwijzers," who were entitled, though not bound, to consult professional lawyers.

The personal council of the Count exercised jurisdiction after 1448. In 1472 Charles the Bold established a "camera consilii," a court of justice, which remained in existence during the reign of his successors. In 1547, Charles V., who had been accepted as overlord of the province in 1543, turned the Court into the "Hof van Gelderland," or court of justice for the whole of the province. In the eighteenth century the "Hof" consisted of twelve members, viz., nine ordinary (who had to be graduates in law of a university and were chosen by the nobility and the towns), and three extraordinary members.

The "Hof" was intended to be a court of appeal for the province, but this was only realised in 1676, when the last of the counties ceased its resistance against appeals being brought to the "Hof" from judgments rendered by its particular courts.

Holland was divided into districts, called "baljuwschappen," in which the count was represented by a "baljuw" ("drost" or "ambtman"). The "baljuwschappen" were divided into "schout-ambachten." The courts of the "schout" were the lower courts ("lage vierschaar"), from which appeal lay to the courts of the "baljuw," or higher courts ("hooge vierschaar"). In these the "baljuw" sat with nobles ("welgeboren mannen").

In Zeeland a similar condition of things existed. There were (1) the lower courts, consisting of "schepenen" and presided over by the "schout" and (2) the higher courts, consisting of the "Hooge Vierschaar."

The first council of the Count which obtained judicial powers assembled in 1428. These powers were extended in 1531 by Charles V., when it may be said that the exclusively judicial character of the "Hof van Holland, Zeeland, en Westfriesland" was completed.

**Supreme Court ("Hooge Raad").**—The Dukes of Burgundy desired to establish one Supreme Court for all their dominions, and they endeavoured to do this through their Great Council at Mechlin. The erection of this Council by Charles V. into a Supreme Court, intended to act as a court of appeal for the Northern and Southern Netherlands, ceased to have effect on the outbreak of hostilities in the second half of the sixteenth century, when Mechlin adhered to the Spanish rule.

In consequence of the separation between the Northern and Southern Provinces a new Supreme Court was required for the north. In April 1580 the States of Holland resolved to create a Supreme Court ("Hooge Raad"), and two years later, in May, 1582, its rules and orders were sanctioned by the Prince of Orange. In 1587 an agreement was entered into between Holland and Zeeland that the Supreme Court should also form a court of appeal for Zeeland. Its authority was never extended to other provinces. It consisted of ten members (a president, six members for Holland and three for Zeeland), all of whom had to be doctors or licentiates of law. It was a Court of Appeal for cases which had been decided by the "Hof," in first instance, whilst in certain cases it exercised itself jurisdiction in first instance. In cases which the "Hooge Raad" was able to hear in first instance, but which had been heard by inferior courts, appeal could be brought direct from such inferior courts to the "Hooge Raad."

From this summary (*a*) it may be seen that, with the exception of Friesland, after the people ceased to take a direct part in the administration of justice the authority of the courts passed into the hands of the nobility and the representatives of the towns. A further development gave the professional lawyers great influence: (1) through their being consulted and (2) through the courts of appeal.

The influence of these courts has certainly been towards unification of the law in each province, and in Friesland the attempt was undoubtedly successful. It should, however, be borne in mind that the doctrine of *stare decisis* was never adopted in the Netherlands, and that the influence of the courts was never based on authority (*b*). The independence of the different

(*a*) This summary of the Dutch Courts is principally taken from *Nederlandsche Rechtsgeschiedenis*, vol. iv. Fockema Andress, "Bijdragen tot de" (*b*) Bynkershoek, "Quaestiones

provinces and the difference in the development of their institutions did not spread this influence beyond the boundaries of each province. The Hooge Raad has never had any authority beyond the provinces of Holland and Zeeland. Moreover, the great anxiety of the lower courts to preserve the customs of the country against the influence of the Roman law, and of the towns to retain their own rights and privileges were hindrances to unification of the law by means of jurisprudence and binding decisions (c).

(2) **Revival of the Roman Law.**—The German tribes, when they displaced the Romans and imposed their own laws throughout the countries of Northern Europe, did not elsewhere displace Roman legislation nor the authority of the Roman jurists. Protected by the cloisters of the monasteries, the study of the civil law was continued, and it only required the establishment of a university at Bologna, of which the doors were thrown open to all comers, to attract students from every part of Europe, who after their studies in Italy carried with them to their respective countries the teachings of the commentators and their commentaries on Justinian's Codes.

**Reception of the Civil Law.**—This is not the place to do more than mention the fact of the "reception" of the civil law, or to enter into an explanation as to why the Codes of Justinian were the subject of legal study at the first universities of Europe. It is sufficient to point out that the teaching took the form of commentaries on those codes, which were taken as containing the entire substance of the law of the Roman Empire.

From the eleventh century onward this study gradually spread from Northern Italy over the several countries comprised within the German Empire.

In those parts of France which formed the *pays du droit écrit* the Roman law had long been part of the national law; and the development of the national law could not be disturbed or upset by a later recognition of a system to which it had never been foreign.

But its reception was of great consequence in the countries where the primitive traces of Roman dominion had long been supplanted

Juris Privati," L. II., cap. 13, § 6. Cf. also "Quaestiones Juris Publici," II., 12 in finem.

(c) S. Van Groenewegen, "de Legibus Abrogatis," Cod. III. i. de Judiciis pr.



by local customs, and where the new commentaries on Justinian's Codes came into contact with the local laws and customs in their diversified form.

In the *pays du droit coutumier* the civil law had some influence on the development of the national law. In the countries of Northern Europe it was received, but never digested. Hence its struggle to obtain supremacy.

When and how it gained ground cannot be stated with accuracy, but that it did so is an undeniable and comprehensible fact.

It received the greatest assistance from the universities. Why this was so, and why accompanied with a total neglect of the study of the common law and local statutes, finds its explanation in the fact that the civil law was handed down to posterity in a codified form. The study of this collection of laws and legal maxims was an easy task for the student compared with the labour attached to wading through and finding his way among the great variety of laws and customs in divers localities.

There was another reason. University teaching was at one time mostly in the hands of ecclesiastics, whose canon law was based on the law of Rome, and who did not recognise the laws made by any temporal power as having any authority over the Church. The result of their labours was that Justinian's Codes, together with the Canonical Code, formed part of the laws to which the "reception" extended.

The danger of this predominance, and the fear lest the common law should be entirely overridden by the law of Rome, led in England, amongst other things, to the grant to the Inns of Court of the privilege that only their members should be allowed to practise in the courts of the country.

Such a privilege as this was not granted in any country of Northern Europe.

When the Roman influence began to make itself felt in Northern Europe the administration of justice there was in the hands of the people, or at least in the hands of laymen. In the universities lawyers were trained, and wherever the assistance of the trained lawyer was required the civil law gained its admission into the jurisprudence of the country, and an opportunity was afforded for it to influence the law of the land. Together with the gradual surrender of the jurisdiction into the hands of lawyers and the

minimising of the popular element in the courts of justice, the predominance of the law of Rome became more certain and secure.

This is called the "practical reception" of the civil law, in opposition to the "theoretical reception," by which is understood the idea of the continuation of the Roman Empire by the German Emperors and their recognition of Justinian's Codes as the law of their predecessors by which they were bound.

While, however, this reception in theory comprised the *Corpus Juris Civilis* in its entirety, it extended in practice to the jurisprudence which was built up by the Italian commentators on the *Corpus Juris Civilis* as mentioned above.

Besides the Justinian Codes there were comprised in the "reception" the *Corpus Juris Canonici*, whose authority was extended from the ecclesiastical to the civil courts, and the feudal law of the Longobards as compiled in the "Consuetudines" or "*libri feudorum*," and added to the *Corpus Juris* as a supplement to the *Novellæ* (d).

**Reception of the Civil Law in the Low Countries.**—In the Low Countries the struggle between these foreign laws and the common law was a long and a fierce one, and the result has by no means been the same in all the provinces.

As to its "theoretical reception" and the formal recognition of its authority we find repeated references to the "imperial laws" and "*beschreven regten*," or written laws. So in Friesland at the end of the fifteenth century, and in the Ordinance of 1602, mention is made of imperial laws and other laws of the country or other good customs. In other ordinances and compilations of the common law ("*landrechten*") of the seventeenth and eighteenth centuries it was provided that justice should be done according to the laws and customs of the country, and that, if these were silent, the "*beschreven regten*," or written laws, should be followed. Thus the resolution of the States of Holland and West Friesland of the 25th of May, 1735, provided that justice should be done according to "the laws and placards of the country, as well as the privileges and customs and usages, and in default of them, according to the *beschreven regten*" (e).

It is doubtful what was meant by "imperial laws" and

(d) Cf. for the history of the reception H. Brunner, "*Grundzüge der Deutschen Rechtsgeschichte*," par. 61, and the authors quoted on p. 241.  
(e) *Groot Placaetboek* VII., 964.

"beschreven regten," whether the expression was intended to include the Corpus Juris or only the Imperial legislation, as continued by the States-General after 1581 and the legislation of the Provincial States (*f*). Nowhere is the expression defined; and, except in Friesland, there are nowhere proofs of the reception of the civil law in its theoretical aspect.

In the province of Friesland the civil law obtained official authority in the fifteenth century under the Dukes of Saxony and Charles V., and was ever after regarded as the common law of the country (*g*).

The conditions of its "practical reception" were entirely different.

In all the provinces, with the exception of the provinces of Drenthe and Overijssel, many customs recognised the subsidiary authority of the civil law. Its great influence was derived from the courts of appeal or Superior Courts (*hoven*), of which the members, or a majority of them, were obliged to be "Doctores Juris," a degree which was only granted at the universities. And in a humbler position, as advisers to the *ordelwyzers*, the influence of the lawyers who had had a university education was of considerable importance (*h*).

**The Study at Dutch Universities.**—The Dutch universities have played a greater part in the development of the Roman law than any others in Northern Europe. On them rested the mantle which had fallen from the shoulders of the French when religious persecutions stopped the progress of culture and drove the learned away. The massacre of St. Bartholomew may be taken as the date when the Dutch took up the task which had been partially abandoned by the French. The Dutch soon became pre-eminent in paraphrasing and explaining the civil law as codified by Justinian. Not content with this, however, they devoted special attention to legal history. Their proficiency in these studies gave a peculiar character and value to their labours, and thus was formed the Dutch school, which, together with the Spanish, may be said to have been mainly instrumental in advancing the study of civil law during the seventeenth century and the first half of the eighteenth.

(*f*) H. Grotius, "Introd.," I., 2, L., 2, 46 and 47; v. d. Sande, "Dec. Fris.," II., 2 Def. 2, par. 1.

(*g*) Cf. the preface to the "Statutes and Ordinances of 1723"; Huber, "Hedendsdaegse Rechtsgellertheyt," (*h*) Cf. Groenewegen, "Leg. Abr.," Cod. III., 4 pr.

If any weight be attached to the legal conceptions of Roman jurists, the importance of these researches can hardly be over-estimated. The study of Roman law has passed through several stages, from the mere commentaries of the earlier centuries to the historical and analytical dissections of modern times. So continuously has it formed a subject of new and ever more elaborate methods of explanation, that its study may be grouped according to distinct stages of development. Thus the history of each epoch becomes not only interesting, but necessary, for the understanding of the whole structure of modern Roman law.

Justinian's codified law of the sixth century was recognised throughout civilised Europe as a source of legal wisdom, and as the principal guide in the administration of justice. It formed the fundamental basis of legal thought in France, in Holland, in Germany. The learned jurists at the Dutch universities, as practical men, went a step further than the mere commentators of former days, and did not reproduce in their works the pure law of the Romans only, but presented it adorned and enriched with the decisions of the courts, and their own opinions. We do not find in their books the law as it was in the time of Justinian, but the law as it was in their own days, based, however, on Roman principles. Thus they created a Roman-Dutch law, of which the Roman law formed the frame-work and the most important portion, with Dutch additions, consisting of judgments, local laws, and customs.

Those among them who were more particularly concerned to explain the civil law as it appeared in Justinian's Codes—to which in notes of their own the law of their times was added, either by way of explanation or example, or as diversion from the original ideas—remained the true interpreters of the civil law, and the value of their work still remains unimpaired. They kept Roman law alive, tested by the ordinary occurrences of daily life. As society moves forward, relations and circumstances alter and sometimes demand new provisions to meet their requirements. But the principles laid down by the ancients remain applicable, and the more extended the interpretations the more clearly those principles are brought to light.

Those who studied under the eminent jurists who rendered the University of Leyden famous throughout the civilised world,

afterwards, as advocates and as judges, carried with them the classic spirit imbibed from their *alma mater*.

**Roman Law adopted Practically rather than Expressly.**—The Roman law thus acquired a greater authority in practice than was assigned to it by law (i).

In Holland and Zeeland its influence was great, though it never attained more than subsidiary authority. There are no traces of the Roman law being accepted before the sixteenth century. In several statutes the provision was repeated that, in the absence of local laws, justice should be done according to "*beschreven regten*." Roman law is, however, especially to be found in the judgments delivered by the hoven, or courts of appeal, which encouraged the tendency towards that system (k).

In Gelderland it began to make its influence felt in the fifteenth century, and it obtained subsidiary authority in the seventeenth century. There was much objection, however, on the part of the lay element in the courts, and bitter complaints were heard in the seventeenth and eighteenth centuries against the lawyers for pushing the Roman law into the foreground. It is probable that during the latter half of the eighteenth century the Roman law retained only such authority in Gelderland, as was given to it by the laws (l).

In Groningen the circumstances were similar. Officially Roman law obtained subsidiary authority only, and that at a late date in the eighteenth century (m).

In Utrecht the influence of Roman law was very small before the sixteenth century. Its introduction was here also due to the

(i) H. Grotius, "Introduction," I., 2, 22; S. van Leeuwen, "Roomsch Hollandsch Regt," I., 1, par. 11; cf. the edition of this work by Decker, in his note on the passage quoted, and Kotzé's translation, *loc. cit.*; Groenewegen, "Leg. Abr.," Inst. Proemium, cf. *ibid.* Cod. III. 1, pr.; Bynkershoek, "Observationes Juris Romani," in the preface; J. van der Linden, "Practicaal en Koopman-shandboek," I., 1, 4.; Van der Keessel, "Thes. Sel.," Thes. vii. *et seq.* Fockema Andreae, "Notes," I. 2, 22.

(k) Fockema Andreae, "Bijdragen," iv., pp. 434—443.

(l) Fockema Andreae, "Bijdragen," iv., 347—354; cf. H. Schrassert, "Consultation en Adviezen," IV., 145 and 172; Lamb. Goris, "Advers. Jur. Subcis." (1632), Tract II., p. 1, No. 28 *et seq.*; J. Pronck, "Animadversiones," &c. (1705), Opdracht, p. xi.; J. Schrassert, "Codex Gelro-Zutphanicus" (1740), in the preface.

(m) Fockema Andreae, "Bijdragen," iv., 147—149.

influence of the court of appeal, though it remained mainly restricted to the towns (*n*).

It acquired no authority in Overÿssel (*o*), or in Drenthe (*p*). In the former there existed no court of appeal; and in the latter the jurisdiction remained in the hands of the people until the end of the Republic.

The influence of the appeal courts was, as has already been pointed out, purely a moral one. The lower courts were not bound by the decisions of the higher. The provincial appeal courts had no influence beyond their jurisdiction, while a supreme court only existed by treaty between two provinces, and even then with limited jurisdiction.

The Supreme Court at Mechlin, whatever its influence may have been in the southern provinces, had none in the northern; and it is not probable that its decisions, even before hostilities broke out, weighed considerably with the judges of the provinces of the north.

2. (*c*) Collections of "Decisions" and "Opinions."—The influence of Roman law on the practical development of legal thought in the Low Countries can best be measured from the collections of "decisions" and of "opinions" in each province. These show that sometimes remarkable differences of opinion existed between different courts and lawyers, and, in the absence of any predominant influence making for uniformity, careful and critical study is required in order to ascertain what was considered to be the law at a particular time.

Another characteristic of these collections of decisions is the smallness of their number, and their total absence in provinces like Drenthe and Overÿssel, as compared with the voluminous legal literature of the time. If so little care was bestowed on collecting decisions, their value as precedents certainly cannot have been considered to be very great.

The collections of "Decisions" are as follows:—

Friesland: J. v. d. Sande, "*Decisiones Frisicæ*," or in its full title "*Theatrum practicantium, hoc est decisiones aureæ sive rerum in suprema Frisiorum curia judicatarum*" (1674); U. Huber, "*Observationes rerum judicatarum*" (1723—1727); G. Nauta, "*De decisien van het Hoff van Frieslandt*"; J. Beucker,

(*n*) Fockema Andreae, "*Bijdragen*,"  
iv., 178—180.

(*o*) *Ibid.*, 226—230.

(*p*) *Ibid.*, 260—262.

"Res in suprema curia judicatæ," or "Decisiones curiæ Frisiacæ" (1780 and 1782).

Groningen.	} None extant.
Drenthe.	
Overijssel.	
Gelderland.	

Utrecht: H. Radelandt, "Decisiones Posthumæ Curiae Provincialis Trajectinæ" (1637); Ant. Matthæus, "Observationes rerum judicarum a supr. Ultrajecti revisionis consensu" (1673).

Holland: Neostadius, "Utriusque Hollandiæ, Zeelandiæ, Frisiæque curiæ decisiones" (1602, 2nd ed. 1644), and "De pactis antenuptialibus rerum judicarum observationes" (1644); J. Coren, "Observationes rerum judicarum" (1661); "Decisiën en Observatiën van den Hove van Holland" (1751); "Sententiën van den Hoogen en Provincialen Raad" (1662); "Sententiën en gewezen zaken van den Hoogen en Provincialen Raad in Holland, Zeeland en West Frieslandt," 1st volume printed by Joannes Naeranus, 1662; Boel ad Loenium, "Decisien en observatiën" (1712); J. van der Linden, "Gewysden," &c. (1803); "Sententien van den Hove van Holland en West Frieslandt."

Brabant: P. Stockmans, "Decisiones Curiae Brabantiae" (1670); G. de Wynants, "Supremæ Curiae Brabantiae Decisiones" (1744).

The collections of "Opinions" of lawyers on cases submitted to them are more voluminous, and are as follows:—

Overijssel: L. C. H. Strubberg, "Overijsselsch Adviesboek" (1784—1794).

Gelderland: J. Schrassert, "Observationes practicae" (1736); J. Schrassert, "Consultatien en Advysen," 5 vols. (1740—1754); M. A. van Lamsweerde, "Gelresche Consultatien en Advysen," 3 vols. (1776—1782); J. Schomaker, "Selecta consilia et responsa juris," 6 vols. (1736—1782).

Utrecht: "Utrechtsche consultatien," 3 vols. (1675—1700).

Holland: "Consultatien, Advysen en Advertisementen," 6 vols. (1645—1666); "Vervolg op de Hollandsche Consultatien en Advysen" (1740); "Nieuwe Hollandsche Consultatien" (1741); Is. van den Berg, "Nederlands advijs-boek," 6 vols. (1707—1719); Van der Kop, "Nieuw Nederlands advijs-boek" (1769).

The customary and statutory law of the several provinces has been collected in numerous volumes, containing the different

"Landrechten" and "Stadtrechten," Collections of Placards, of "Handvesten," "Keuren," Privileges, Ordinances, and "Turben" (q).

The study of the civil law at the universities caused a great number of commentaries to be written by various academical teachers.

The more important are also enumerated in the above-mentioned pamphlet of Professor Andree.

**Codifications.**—Even more numerous than these commentaries are the text books on the laws in force in the different provinces. Some of them give so complete a review of the existing law, expressed in precise and comprehensive language, that they are in the nature of codifications of the law in force at the time, and it is not surprising that three of them have been made the basis of the law in South Africa.

Five of these books occupy a leading position as such co-definitions, the fifth being, indeed, a draft code which political circumstances prevented from ever becoming law. These five are:—

1. For the laws of Friesland: Ulrich Huber, "*Heedendaegse Rechtsgeleertheit, Beginselen der Friesche rechtskunde*" (1686).

2. For the laws of Holland and Zeeland: Hugo Grotius, "*Inleydinge tot de Hollantsche regtsgeleertheit*" (1631) (r).

3. Simon van Leeuwen: "*Het Rooms-Hollands Regt*" (1664). Many subsequent editions appeared, some annotated by S. van Groenewegen and Decker.

4. Joan van der Linden: "*Rechtsgeleerd practicaal (en) koopmans handboek*" (1806).

5. "The Ontwerp 1820" or "Bill 1820."—When Holland, after

(q) A general list of them may be found in the "Review" given by Prof. S. J. Fockema Andree, LL.D. of Leyden in his "*Overzicht van Oud-Nederlandsche Rechtsbronnen*" (Haarlem, 1881). Cf. "*Het Oud-Nederlandsch Burgerlijk Recht*," by the same author, Introduction, pp. 7 and 8. Cf. the articles contributed by J. W. Wessels, entitled "Notes on the History and Development of the Roman-Dutch Law," to the *South African Law Journal* (1903—1907).

(r) An edition with notes by Prof. S. van Groenewegen appeared in 1644, while in 1767 W. Schorer edited the book, bringing it up to date with numerous notes. These notes were

afterwards edited separately and translated from the original Latin into Dutch by J. E. Austen. Again the book was brought up to date in 1800 by Prof. D. G. van der Keessel, who, however, did not publish a new edition, but only his notes (which served as a guide to his lectures) in a separate volume, called "*Theses Selectæ*." His lectures themselves have not been printed, but have remained in manuscript in the library of the University at Leyden, and are called "*Dictatum ad Jus Hodiernum*." Cf. also Preface to Prof. Fockema Andree's editions of Grotius' Introduction, by Prof. R. Fruin, which appeared in 1895.



the Napoleonic wars, had regained its independence and had become the Kingdom of the Netherlands, a special provision for the codification of its laws was inserted in its constitution. Accordingly, committees were appointed, and on March 5th, 1816, the draft of a civil code was published, which had, however, to be revised in view of the union between the northern and the southern provinces of the Netherlands. On November 22nd, 1820, the revised draft was laid before the Second Chamber of the States-General.

This code—generally called the “*Ontwerp 1820*” (Bill 1820)—is a masterpiece of scientific and legal work. It is an exposition of the Roman-Dutch law, and the best text-book on that law as it was in the early part of the nineteenth century, as well as a codification of the law of the United Provinces. It thus forms a fitting crown to the historical development and ultimate union of the ancient Germanic law and the civil law—the Roman-Dutch law which has still to receive its due meed of appreciation.

## II.—ROMAN DUTCH LAW IN THE DUTCH COLONIES.

### *A. The Dutch East India Company.*

**General.**—The Dutch carried their laws and customs with them to their colonies and settlements abroad. At the end of the sixteenth century they discovered for themselves the passage to the East Indies round the Cape, and in 1602 the several adventurers’ companies which had then been formed in the United Provinces were combined under the name of the United East India Company. This Company was from the outset the great rival of the English East India Company, and afterwards owned amongst its possessions, for over 150 years, the Maritime Provinces of the island of Ceylon and the Cape of Good Hope.

The Company received a charter from the States-General, dated the 20th of March, 1602, which gave it a monopoly for twenty-one years of the trade east of the Cape of Good Hope and through the Straits of Magellan. The Company was empowered in that part of the world to enter into treaties with foreign princes in the name of the States-General, to build fortresses, to maintain its own army, to acquire territories by conquest, to appoint governors, to establish courts of justice, and to make laws and regulations for the government of these countries and for the administration of justice. It was subject to the general supervision of the States-General, and

its management was entrusted to a board of sixty directors, elected by the five chambers which constituted the body of the Company. These chambers were composed of the companies which had been previously formed in six towns of Holland and Zeeland, and were amalgamated into the United East India Company: the two more important being those in Amsterdam and Middelburg, and the four lesser ones those in Delft, Rotterdam, Hoorn and Enkhuizen. This accounts for the fact that the Company was held to be domiciled within the jurisdiction of the Court of Holland (Hof van Holland).

The unwieldy nature of so large a board, which, moreover, acted as a kind of representative council, for each chamber had its own staff of servants and managed its own internal affairs, made it necessary that there should be a central body for the management of the Company's affairs common to all the chambers. For that purpose, from the first, a council was created consisting of seventeen members of the different chambers to act as a central board of the Company. This Board gradually absorbed the control of the Company's affairs, and came to be known as the Council of XVII (*s*).

The Company began by establishing factories at Bantam and elsewhere on the island of Java and on the other islands of the Malayan Archipelago. These were in 1610 placed under the control of a Governor-General, who was assisted by a council, but at first had no fixed headquarters. Friction with the native population and with European rivals in trade soon rendered it necessary to establish a separate seat of administration for the Company, and after encountering many difficulties, the then Governor-General, Jan Pieterszoon Koen, conquered, in 1619, the town of Jacatra, on the island of Java, and in the same year founded the castle and town of Batavia. This settlement became and remains to the present day the capital of the Dutch possessions in the East.

As the influence and power of the Company extended in these regions, different districts were created under the administration

(*s*) Cf., for the detailed history of the company's administration, the articles of Professor J. E. Heeres in the "Encyclopædia voor Nederlandsch Indië," *sub tit.*, "Compagnie (Oost-Indische)" and "Indië (Administratie der Compagnie in)," and authors there cited. As to the judicial system of the Dutch East India Company, cf.

G. C. Klerk de Reus, "Geschichtlicher Ueberblick der Administrativen, Rechtlichen und Finanziellen Entwicklung der Niederländische Ostindische Compagnie" (1894), pp. 132 *et seq.*, and the above-mentioned "Encyclopædia," *sub tit.* "Rechtswezen," by W. C. Veenstra, and authors there cited.

of governors, commanders, directors, and chiefs, who were all subordinate to the central government at Batavia, by whom they were generally appointed and dismissed. As a rule, the instructions for all the Company's possessions were issued by the Governor-General and Council at Batavia, and forwarded by them, either to all the out-stations or to those more particularly concerned, while all administrative measures of a local character were left to the governor or commander of the possession. Correspondence with the directors at home was conducted through the Batavian Government, though direct communication between the Council of XVII at home and the subordinate settlement was not excluded. This became especially the practice with the settlements at Ceylon and at the Cape of Good Hope.

General instructions were in the first place given by the board of directors to each Governor-General on his departure for the Indies. Some of these instructions received the sanction of the States-General, and they became more elaborate with each succeeding Governor-General. So much was this the case that after 1617 only two more general instructions were sent out during the existence of the Company, which, however, were not sanctioned by the States-General, viz., one dated the 17th of March, 1632, and the other dated the 26th of April, 1650. Until the end of the United Company these two remained the foundation of the judicial and administrative government of its possessions outside Europe.

**The Administration.**—The supreme government of the Indies was vested in the Governor-General and Council at Batavia. Although their authority over the other possessions of the Company was not clearly defined, they made regulations binding on officers and places outside Batavia and its immediate neighbourhood. The governors of some of the outlying stations were extraordinary members of the Council, and reports for the use and information of the Council of XVII on all events taking place in these different possessions were annually prepared by them and forwarded to Batavia (*t*), while one of the ordinary councillors was specially entrusted with authority as director-general over all the commercial relations of the Company beyond the seas (*u*). The several governors exercised extensive powers, especially if their government was at some considerable distance from Batavia.

(*t*) See Instructions for Governor-General and Council of 1650.

(*u*) Valentijn, "Oud en Nieuw Oost-Indië," vol. iv., I., p. 352.

The Governor-General and Council exercised administrative jurisdiction over all servants of the Company, but the higher officers were either appointed by the Council of XVII, or their election or appointment required the sanction of the authorities at home.

**Division of Administration.**—As originally the Governor-General was *primus inter pares* among the members of his own council, so the government at Batavia was *primus inter pares* among the governments of all the other possessions, and the administration of each of the more important of the out-stations, i.e., those to which territory was attached, was modelled on the one at Batavia.

The original form of government for the territorial possessions did not differ from that which was adopted for the regulation of the ships of the Company and their crews. Just as each ship had its council, the members of which were nominated by the Council of XVII before the ship left, and the captains of the different ships which formed one squadron met as a general council ("Breed en Raaedt") under the presidency of the commander-in-chief, so the several stations were at first governed by a commander and his council. When Admiral Wybrand van Warwyck received instructions in 1603 to establish a Council of Justice at the first settlement of the Dutch in Java, the council which he constituted at Bantam was modelled on the lines of the council which administered justice in his fleet.

The office of Governor-General was created in 1610; and in the instructions issued in 1617 to him and his council, the duty of the council (afterwards called the Council of India) was stated to be to assist the Governor-General "with advice and practically in all matters concerning commerce, war and government, as well as in the maintenance of justice in civil and criminal cases." All matters of importance were brought before the council, and it acted in an administrative as well as in a judicial capacity.

It was left to Governor-General Koen to separate the two functions and lay the foundation for the judicial system of the Company as it obtained later in all its Eastern possessions. Immediately upon the foundation of Batavia, in 1619, there followed the resolutions of the Governor-General in Council appointing a "Baljuw" for the conquered town of Jacatra (now Batavia) and its surrounding territory (29th of March, 1620); creating a Court of Sheriffs ("College van Schepenen") for the town and surrounding territory (21st of

July, 1620); and establishing (on the 15th of August, 1620) a Council of Justice ("Raad van Justitie").

**The Judicial Administration.**—The most important of these creations was the last one, which, under the name of Supreme Court of Justice of the Netherlands Indies ("Hoog Gerechtshof van Nederlandsch-Indië," the name assumed in 1814), exists to the present day. It was then called the "Commissarissen en ordinaris luyden van den gerechte in 't Fort" (Commissioners and ordinary members of the Court in the Fortress), and was, in fact, a military tribunal, presided over by a member of the Council of India. In 1626 its name was changed by resolution of the Governor-General and Council into the "Ordinaris Raaet van justitie binnen het Casteel Batavia" (Ordinary Council of Justice within the Castle of Batavia), and in 1650, by the general instructions issued by the Council of XVII to the Governor-General and Council, all the judicial powers of the Council of India were transferred to this Ordinary Council. In the same instructions it was specially ordered that all sentences of this council should be immediately executed, and the Governor-General received absolute orders not to interfere in any way with its jurisdiction, and not to exercise the privilege of pardon in any way where judgment had been pronounced, as the granting of a pardon was the prerogative of the Sovereign, and would lead to disrespect for the judiciary (x). In the case of death sentences, only, the Governor-General and Council were allowed, by resolution of the majority in a full council, to pardon the person condemned to suffer capital punishment. Soon afterwards, by resolution of the Governor-General and Council of the 26th of November, 1657, all governors, directors, and chiefs of the out-stations were forbidden to exercise the privilege of pardon in any case.

(x) Similar provisions were inserted in the Instructions given to the Governor of Suriname by the States-General on the 5th of January, 1689. Cf. "Groot Placaatboek," iv., p. 1337. Art. x. runs as follows: "As the welfare or bad condition of a country does no less depend upon justice being done well or badly, so the Governor shall pay proper attention and take extreme care that justice shall be administered there properly and with

fairness, in order that the Colony with God's blessing may advance and prosper through the influx of men, increase of commerce and navigation, as is the purpose of a State; therefore, nobody who has been condemned to death by the Court shall be pardoned unless this be done for very pressing reasons and considerations which might move the Governor; in this he should, however, go to work with the utmost prudence."

In 1661, the number of the members of the Council of Justice was increased to nine, but it was again reduced at the beginning of the eighteenth century. The presidency remained in the hands of an Ordinary Member of the Council of India. In 1709, the Council of XVII ordered that an Extraordinary Member of the Council of India should occupy the vice-presidency. The members were chosen for an indefinite period.

The jurisdiction of this council as a Court of first instance extended over all servants of the Company in civil as well as in criminal matters, irrespective of their domicile; over all matters involving the liberty of the country, or touching the rights, customs and finances of the company, or regarding marine affairs, possessory actions, imprisonment and interdicts, and over cases in which widows, orphans, and other *personae miserales* were involved. It was also a Court of Appeal in causes decided by the Sheriffs' Court.

No appeal lay from the council, but, in cases heard by the council as a Court of first instance, revision could be applied for within two years after judgment was pronounced, on a payment into Court of a security of 100 reals of eight (*y*), which was increased when the application was granted. On the application of the appellant the Governor-General and Council appointed certain persons equal in number to those who had formed the Court from whose decision revision was claimed, in order that they might together form a collective Court of Revision, whose decision was final (*z*).

The "College van Schepenen" (Sheriffs' Court) consisted at first of six, afterwards of nine, members, viz., four citizens, three servants of the Company and one Chinaman, who were appointed annually on the 30th of May by the Governor-General and Council, out of a nomination of fourteen Dutchmen and four Chinamen. Its jurisdiction was limited to the town and immediate neighbourhood of Batavia. Though at first all Europeans, *i.e.*, the Company's servants, foreigners, and "free citizens" (*a*) were subject to its

(*y*) This right of Revision was never specially regulated, but was instituted in imitation of the grant made to the West Indian Company by Art. 50 of the Instructions of the States-General dated the 23rd of August, 1636. It was sanctioned by the Council of XVII in their letter to the Governor-General and Council dated the 7th of April,

1663, and by the States-General in their Resolutions of April 26th, 1691; July 14th, 1692; February 17th and May 30th, 1698, and April 10th, 1705.

(*z*) Klerk de Reus, "Ueberblick," pp. 146-151.

(*a*) These were the settlers in the colony not in the service of the Company.

jurisdiction, this was afterwards restricted by the Statutes of Batavia to criminal and civil cases concerning foreigners at Batavia and citizens who were not servants of the Company. Criminal cases were heard by the Full Court, civil cases by a Court consisting of at least five members, while smaller cases were heard by courts consisting of two to four members. There was no appeal from decisions in criminal cases.

In civil matters appeal was allowed within eight days to the Full Court, on payment into Court of a security of three reals of eight, which were forfeited in case the judgment under appeal was confirmed.

From the Full Court an appeal was allowed to the Council of Justice within ten days, on payment into Court of twenty-four reals "caution money." As regards the judgment of the council when acting as a Court of Appeal, revision was possible if applied for within a year after the judgment had been pronounced (*b*).

**Legal Officials.**—The duties of public prosecutor were performed, before the Sheriffs' Court by the "Baljuw," and before the Council of Justice by the "Fiskaal."

The "Baljuw" was in fact the head of the town police. By resolution of the Governor-General and Council, dated the 8th of February, 1651, the first "Landdrost" was appointed, and he had to assist the "Baljuw" in his police duties. After 1655, the "Baljuw" was further assisted by six "Wykmeesters," or assistants, for the different town districts, who also performed the duties of sanitary officers (*bb*).

The "Fiskaal" (Fiscal) originally was the legal officer in the ship's council, and discharged, with the commander and the keeper of the ship's books, the most important functions of that council. This office was reproduced in the land settlements, and the title of "Fiscal of the Company" appears in the above-mentioned instructions to Admiral van Warwyck and in those of 1610. In the Instructions of 1617, it was ordered that the Fiscal should be the fourth member of the Council of India, but as it was difficult always to find a good lawyer among the members of that council, after a time he was chosen from outside, and then the office of

(*b*) Klerk de Reus, "Ueberblick," pp. 143-145. These statements refer to Europeans only. For natives there was a "Commissioner for native

affairs," and there were special Courts. As to the former see p. 98, and as to the latter pp. 109 and 110.

(*bb*) *Ibid.* pp. 145 and 146.

"Advokaat-Fiskaal" became an independent office. This example was followed at the end of the seventeenth century in a number of the out-stations.

By resolution of the Governor-General in Council of the 30th of November, 1666, the office was divided into two, viz.: that of the "Land Fiskaal," afterwards called the Fiscal, and that of the "Water Fiskaal." The former remained the public prosecutor *par excellence*, while the latter was entrusted with all police duties on the roadstead and the river of Batavia.

The "Land," or "Advokaat Fiskaal," had the exclusive right of prosecuting the servants of the Company; he could prosecute "free citizens" and strangers only if they had been caught red-handed by his officers, or if the "Baljuw" had not secured them before. In civil matters he was a member of the Council of Justice (c).

For the administration of estates left by persons who had died intestate without leaving next of kin in the territory of Batavia and its neighbourhood, a *curator ad lites* was appointed by resolution of the Governor-General in Council, dated the 5th of September, 1648. By an "Octroy," dated the 26th of November, 1671, the States-General authorised the Company to appoint such curators (d).

**Various Courts of Justice.**—On the 1st of October, 1624, an Orphan Chamber was created for the administration of estates belonging to minors who had lost one or both of their parents (e).

For non-Christians (including Chinese and natives), a similar institution was created on the 26th of May, 1640, called the "on-christelyke (non-Christian) Boedelkamer" (f).

The members of these chambers were appointed by the Governor-General and Council. Both institutions are in existence at the present day in every town in the Netherlands East Indies where a Council of Justice is established.

In order to relieve the Sheriffs' Court, a committee was created in 1656 (by resolution dated the 11th of February), called the Committee for Petty Cases (g). This Court consisted of two members of the Sheriffs' Court and one member of the committee for marriage affairs (a committee instituted in 1642 to check the abuses existing with regard to marriages of Christian persons). The Court sat at

(c) Klerk de Reus, *ubi cit. sup.*  
pp. 151—153.

(d) *Ibid.*, pp. 166, 167.

(e) *Ibid.*, pp. 154—156.

(f) *Ibid.*, pp. 156—158.

(g) *Ibid.*, pp. 159, 160.



first once, and afterwards three times a week. The cases which were heard before the Court were limited to those which did not involve more than 100 reals of eight. Appeals lay to the Sheriffs' Court, but in 1684, by resolution of the Governor-General and Council, dated 19th—24th of December, appeals were restricted to cases which involved a sum of at least fifty "rijksdaalders."

The Council of Justice, the Sheriffs' Court, and after the 6th of July, 1731, the Committee for Petty Cases gave judgments "in name and by order of their High Mightinesses the States-General of the Netherlands."

The Sheriffs' Court, by "plakkaat" dated the 1st of February, 1627, were deprived of another of their functions, viz.: the supervision of all landed property, roads, and waterways. In 1664, a new board was created called the "Collegie van Heemraden" (a), whose instructions date from the 23rd of July, 1680. It consisted of five members, presided over by a member of the Council of India. Their duties, according to these instructions, comprised not only the registration of landed property and the supervision of all bridges, dykes, roads, canals, etc., but also the consideration of applications for grants of lands, the decision of disputes between landed proprietors and regarding rural rights.

The exact date when the first Commissioner for Native Affairs (b) was appointed cannot be given. His duties were especially to take care that the provisions of the "plakkaten" regarding natives were complied with, and to exercise police supervision over natives. His office was afterwards combined with that of the "Landdrost," but by resolution of the Governor-General and Council of the 12th of February, 1715, these offices were again separated.

A special Admiralty Court was instituted by resolution of the Governor-General and Council, dated 12th August—17th September, 1746 (bb).

Its duties were to decide disputes between shipowners, between shipowners and passengers, between passengers and between merchants. Further, it had to watch over the East Indian trade generally, promote its extension, and make the necessary proposals for that purpose to the Governor-General and Council. Owing to the Company's monopoly, it had, however, a short existence, and was abolished by resolution dated the 28th of August, 1755.

(a) Klerk de Reus, *ubi cit. sup.*,  
pp. 162—166.

(b) *Ibid.*, pp. 167, 168.  
(bb) *Ibid.*, pp. 168, 169.

**Law in Force.**—Such was the machinery provided for the administration of justice; the law which was to be administered in these territories now requires notice. In this connection the instructions dated the 17th of March, 1632, issued by the Council of XVII, are the most important, as they contain more explicit orders regarding the administration of justice than any of those issued previously, the directors being desirous to prevent any recurrence of the tragedy of Amboyna in 1623 (c). In the first article of these instructions it was said that “as the foundation of every good and well-ordered Government consists in the administration of equitable justice, the Governor-General in the first place, as well as the other members of the Council, are strictly enjoined, in accordance with the commission received by them from the Noble High and Mighty States-General and his Excellency the Prince, as well generally as in special cases, to secure that at Batavia, and all other places under the dominion of the Company, justice shall be done in accordance with the instructions and customs which are as a rule observed in the United Provinces of the Netherlands, as well in civil as in criminal cases, until such time as other special instructions shall be made and forwarded in the name of their High Mightinesses and his Excellency, and which all judges shall for the future have to observe” (d).

In art. 2 it was provided that justice should be expeditious, and in art. 3 that no prosecution should take place in subordinate stations and possessions for “conspiracy, treason and similar crimes,” without the knowledge of the Governor-General and Council.

From the description given in the foregoing pages of the law observed in the Dutch Provinces at that time it appears that some more precise definition of the words “the instructions and customs which are as a rule observed in the United Provinces of the Netherlands,” would not have been superfluous, in order to indicate which of the provinces should be regarded as predominant for this purpose. As these provinces were considered as so many separate countries, it was observed as a general rule of international law that the subjects of each should be treated according to the law of their own Province or State. It was natural that in the possessions outside Europe a

(c) T. Myer, “Verzameling van Instructien Ordonnancien en Reglementen voor de Regeering van Nederlandsch-Indië,” pp. 49 *et seq.*

(d) J. A. van der Chijs, “Nederlandsch-Indisch Plakaatboek,” vol. i., p. 263.

general condition of equality under a single central government should tend to assimilate these different laws and customs for all persons living in those regions, and attempts to that effect had been made before the receipt of these instructions at Batavia, which were afterwards followed by special "plakkaten," ordinances and codifications.

In 1625, steps had been taken to secure proper rules of procedure. In accordance with orders received from the Council of XVII, by letter dated the 4th of March, 1621, the Governor-General and Council, on the 6th of February, 1625, instructed the "Raad van Justitie" and the "College van Schepenen" to draft rules of procedure to be observed in civil as well as in criminal matters.

The Council of XVII at the same time sent over to the colony (a.) the "printed ordinances as well regarding the administration of justice, within the towns and in the country, as regarding the police, declared to be a perpetual decree ('*eeuwig edict*') by the States of Holland and West Friesland, on the 1st of April, 1580," and recommended them for adoption by the Governor-General and Council for the administration of justice in the countries belonging to the Company. They further recommended the adoption of (b.) the "Interpretation by the States of Holland and West Friesland regarding certain points of the said ordinance on intestate succession," dated the 13th of May, 1594, and (c.) the Plakkaat issued by the same States regarding *successio ab intestato*, dated the 18th of December, 1599 (e).

The Governor-General and Council acted in accordance with this recommendation, and by resolution dated the 16th of June, 1625, the rules of procedure drawn up by the above-mentioned Courts as well as the Political Ordinance of the 1st of April, 1580, and its amending Ordinances of 1594 and 1599, were promulgated as laws to be observed by the sheriffs and the officers of justice in the Republic of Batavia and everywhere in the kingdom of Jacatra in the administration of justice, "as far as may be possible having regard to the condition of these countries" (f).

This resolution enacted that in all cases which were not provided for by the said Ordinances or by "plakkaten" issued previous to 1625 by the Indian Government the judges should observe "the common civil laws as they were practised in the United Netherlands." Though it was expressly stipulated that the laws and regulations

(e) T. Myer, *ubi cit. sup.*, p. 49, note.

(f) Van der Chijs, "Nederlandsch-Indisch Plakkaatboek," vol. x., p. 126.

which were in force in the United Provinces should be enforced in the Indies in so far only as local circumstances should make it possible, this did not violate the principle that in the Indies justice was to be done to Europeans in accordance with the laws and customs of the Netherlands. All successive alterations and amendments of existing rules and regulations left this principle intact. With regard to the natives, generally speaking, it may be said that they remained under their own laws and customs.

The rules of succession prescribed by the Political Ordinance of 1580 and its amending Ordinance of 1599 were observed as established law until 1684, when the next of kin of a certain Gregorius Cornelii, a former inhabitant of the Province of Zeeland, who had died on the homeward voyage in January, 1682, challenged the law as to intestate succession thus established. In a petition to the States-General, they urged that as long as no other laws had been made by the Company in this respect under the sanction of the States-General, intestate succession in accordance with the ancient customs of the Republic should prevail. They requested the States-General, according to the quotation in the "plakkaat," to declare as their "opinion and intention that all those domiciled in these countries who went out on voyages for which a charter was granted by us, and more especially to the East Indies, and who come to die there *tanquam forenses*, should have their estates in case they died intestate administered according to the laws and ordinances of the respective places in the Dutch provinces whence they had gone out and where they were domiciled, and that the children born to them on the voyage, either in the East Indies or elsewhere, should be considered *tanquam originarii* of the said domicile of their parents" (g).

The States granted the petition and made a declaration as desired in their resolution of the 2nd of December, 1684 (h).

**Statutes of Batavia.**—This declaration destroyed the stability of the law of succession in the Company's Eastern possessions and revived the struggle between the "Aesdoms" and "Schependoms" rules of succession. This conflict was not settled by the provisions of the "Statutes of Batavia," notwithstanding the sanction which these Statutes had received from the States-General.

These Statutes, the first compilation of the statute law for the East Indian possessions of that time, originated in the necessity for reducing to order the accumulation formed at Batavia of

(g) Van der Chijs, *ubi cit. sup.*, p. 367.

(h) *Ibid.*, pp. 365—369.

“plakkaten” and ordinances issued by the Governor-General and Council after 1619, which had followed each other in such rapid succession that it had become impossible to know which laws were still in existence and which had been abolished by subsequent legislation. After years of elaborate preparation a compilation of the ordinances for Batavia, arranged in systematic order, so far as necessary amended and brought up to date, was promulgated as a code by Governor-General van Diemen by resolution dated the 1st of July, 1642, and sanctioned by the Council of XVII and the States-General in 1650. It was written by the well-known Joan Maetsuycker and was called the “Ordinances and Statutes of Batavia” (“Ordonnantien en Statuten van Batavia”).

The Statutes were extracted from the “plakkaten” and ordinances of the Governors-General in Council, with additions, emendations and extracts of “the common law of the fatherland” and of “the written Imperial laws” which were considered suitable for the colonial territories.

The last clause of these Statutes runs as follows, viz.: “Further, it has been generally provided that on all points on which in these Statutes no special ordinance has been made there shall be observed and maintained the laws, statutes and customs of the United Netherlands; and as these are bound sometimes to fail also, then the written Imperial laws shall be used and observed in so far as these are in accordance with and practical in view of the condition of these countries” (i).

In two more places special mention is made of the “Imperial written laws” as the subsidiary law to be applied wherever other laws are silent. The first reference is in the passage providing the rules regarding intestate succession (k), and the other is in the regulations regarding the treatment of slaves and their emancipation (l).

The Statutes had the force of law only within the boundaries of the town and district of Batavia as they existed in the year 1650. In all the European Courts, however, in the other settlements of the East India Company they were used and followed, and it may be said that—in practice—the Batavian Statutes were a code for the whole of the dominions of the East India Company (m).

(i) Van der Chijs, “Nederlandsch-Indisch Plakaatboek,” vol. i., pp. 593 et seq.

(k) *Ibid.*, p. 546.

(l) *Ibid.*, p. 576.

(m) Cf. Valentijn, “Oud-en Nieuw Oost Indien,” vol. v., part I., p. 138.

Regarding *successio ab intestato*, the provisions of the 1625 "plakkaat" were practically re-enacted. It was provided generally that the law in force in the towns of North Holland should be followed "as has been provided by the order of the Council of XVII in the year sixteen, that is to say," and then follow—nearly verbatim—all the provisions of the "plakkaat" issued by the States of Holland on the 18th of December, 1599.

In a general letter of the 16th of January, 1660, the Governor-General and Council explained to the Council of XVII that the provisions of the above-mentioned resolution of the States-General, dated the 2nd of December, 1634, were never put in force in the East Indies. The resolution was impracticable on account of "the great diversity and difference in the laws of succession of the countries and towns in the United Provinces." Questions which had arisen on these points had been compromised "as well as could be done" to the satisfaction of the parties. The Governor-General urged that this was an unsatisfactory state of affairs, which should not be prolonged, as it might create "great differences and doubts," and requested that the Council of XVII might approach the States-General and ask them for some definite law, equally applicable to all, regarding rights of succession. "If it only involved the difference between the 'Schependoms' and the 'Aesdoms' rules which are in force in Holland and Zeeland, the difficulty would not be so great, but to have so thorough a knowledge of all the laws, customs and usages of the other countries, towns and places, as to be able to rest assured that justice is done accordingly, seems hardly possible without giving rise to at least very many questions and disputes." Even greater difficulties were foreseen in the case of foreigners who had enlisted in the ranks of the East India Company and who died without leaving a will whilst in the East Indies. The provisions of the Statutes of Batavia were often challenged, and out of the conflict between them and the resolution of the States-General of 1634, "questions and disputes arose in these countries (*i.e.*, the Dutch Republic) which developed into legal proceedings, whereby it was maintained either by those whom it specially concerned or by the next of kin of someone who had died in the Indies, but who had been born in another province, where such law (*i.e.*, that set out in the said Statutes of Batavia)

was not in force, that regarding his estate the laws of the deceased's birthplace should be followed" (n).

In order to put an end to this ambiguity, the Council of XVII petitioned the States-General on the 14th of December, 1660, to make a definite regulation regarding the law of intestate succession applicable to those who died in the East Indies, or on the voyage thither, or on the return voyage. As the States-General had already declared that in their opinion the provisions of the Political Ordinance of 1580 were the most equitable, and had extended them in 1629 and 1636 to the West Indies, the Council of XVII requested that this law might be enacted for the East Indies, together with the modifications or elucidations made by the States of Holland regarding the Political Ordinance in May, 1594, and such modifications taken from the "Aesdoms" rules as were specially "incorporated in order to satisfy those towns and chambers of the said Company, as Amsterdam, Hoorn, and Enkhuizen, in which the 'Aesdoms' rules predominate" (o). These modifications were in fact a copy of the provisions of art. 3 of the Ordinance of the States of Holland, dated the 18th of December, 1599, the rest of that ordinance not being taken over.

In compliance with this request, the States-General issued an "Octroy" on the 10th of January, 1661, declaring that the provisions of the Political Ordinance of the States of Holland and Westfrieslandt of the 1st of April, 1580, together with the further interpretation thereof dated the 18th of May, 1594, should apply, in the same manner as these had been made applicable in 1629 and 1636 to the countries in the possession of the West Indian Company, together with such parts of the "Aesdoms" rules as were specially set out in the above-mentioned petition, and coincided with art. 3 of the Ordinance of the States of Holland, dated the 18th of December, 1599 (p).

This "Octroy" did not reach Batavia until the end of the year 1661. It was promulgated in that town by an ordinance dated the 7th of February, 1662, which at the same time provided that copies should be forwarded to the "Courts of Justice, Orphan Masters,

(n) Mr. P. van Dam, "Beschryvinge van de O. I. Compagnie," MS. in the Record Office at The Hague, Bk. 3, cap. 5.

(o) MS. in the Record Office at The

Hague.

(p) Van der Chijs, "Nederlandsch-Indisch Plakaatboek," vol. ii., pp. 341—343.

Governors, Commanders, and Chiefs of all places which were under the dominion and authority of the Company" (q).

The Statutes of Batavia were revised, amplified, and brought up to date in 1764. This was the work of the Chief Factor, J. J. Craan. The new compilation consisted of an alphabetical collection of all laws, ordinances, "plakkaten," regulations, etc., in force on the 31st of August, 1764. After revision by Louis Tallefert and W. A. Alting, with a view to their issue as a code, the new Statutes were accepted by Governor-General van der Parra and his Council on the 4th of September, 1766 (r).

In the preamble to these statutes it was stated that they should not only be in force at Batavia, but also be "for enlightenment and direction of all the judges and judicial officers at all the out-stations of the Netherlands Indies, in so far as they shall be applicable there and the condition of those places and our authority there shall allow, as we desire that the said new local code to that extent shall be considered in force everywhere" (s).

Regarding succession *ab intestato*, the provisions of the "Octroy" of the States-General of the 10th of January, 1661, are inserted, together with the provisions of the old statutes (which are bodily taken over), and a few amendments made after 1642.

This would lead to the conclusion that the provisions of the Statutes of Batavia had a stronger hold on the Indian Courts than even the States-General could destroy.

The new Statutes of Batavia (t) were forwarded to the directors in Holland on the 21st of October, 1766, but for some unknown reason they never received their sanction. They were, however,

(q) "Nederlandsch-Indisch Plakaatboek," vol. ii., pp. 340—341. Cf. J. W. W[essels] in South African Law Journal for 1904, "History of the Roman-Dutch Law," ch. xxiv., pp. 441 *et seq.* The history of this branch of the law gives a fair example of the difficulty of ascertaining how far any particular part of the Roman-Dutch law is in force in a given colony without a thorough search of the documents which record its historical development. The courtesy of the officials at the Record Office in The Hague, which

is only equalled by their thorough knowledge of the documents entrusted to their care, should encourage the historical investigation and research which is necessary before any decision as to the actual existence locally of any particular law can be reached.

(r) "Nederlandsch-Indisch Plakaatboek," vol. ix., pp. 11—23.

(s) *Ibid.*, p. 28.

(t) These Statutes form the whole of vol. ix. of the "Nederlandsch-Indisch Plakaatboek," edited by J. A. van der Chijs.



used and followed by the Courts of Justice in the Netherlands Indies for nearly a century (*u*).

By the constitutional law for the Republic of the Netherlands of 1798, the Dutch East India Company came legally to an end, and in 1800 it practically ceased to exist. Its possessions were taken over by the State, and their administration was thenceforth in the hands of the Government of the Netherlands. When in the first half of the nineteenth century a new code was promulgated for their Eastern possessions, the colonies of Ceylon and the Cape of Good Hope had long ceased to form part of them, and had become British possessions, where the development of the Roman-Dutch law and legal institutions followed a course of its own.

#### *B. The Out-Station.*

The Company's administration at the several, and especially the more important, out-stations was—*mutatis mutandis*—everywhere on the same lines (*x*).

They were governed by a governor, director or commander, who was often an extraordinary member of the Council of India, and who was nominated by the Council of XVII.

He was assisted by a council which, at first, performed at the same time administrative and judicial functions. As at Batavia, these functions were afterwards separated. The administrative council, consisting of the governor or commander, the second in command, or "secunde," the military commander, the "Fiskaal," and one or two others, was then called the Council of Policy ("Politycke Raedt"). When sitting as a tribunal some extra members were added to its number. As a Council, or Court, of Justice it exercised civil and criminal jurisdiction over Europeans, including the trial of military offences. In certain cases appeal lay to the Council of Justice at Batavia. The procedure was everywhere the same as that prescribed for the Council at Batavia.

The public prosecutor, or "Fiskaal," was the only person entitled to prosecute within the territory belonging to the Company where he was stationed (*y*). His duties were the same as those of his colleague in Batavia. In civil proceedings he was a member of the Court.

(*u*) Van der Chijs, "Nederlandsch-Indisch Plakaatboek," vol. ix., p. 25.

(*x*) Klerk de Reus, "Ueberblick," pp. 170—174.

(*y*) Cf. Report of Charles Hay

Cameron, one of H.M.'s Commissioners of Inquiry upon the Judicial Establishments and Procedure in Ceylon, dated January 31st, 1832, Parl. Paper No. 274, p. 68.

At the end of the seventeenth century, in many of the out-stations "Fiskalen" were appointed as officials independent of the Court to which they belonged, and they had, besides their other duties, entrusted to them the supervision of the Court in order to prevent and check abuses committed by its members.

The Administration were not allowed to execute death sentences. Nevertheless, trials for capital offences did take place, and although the accused was allowed to appeal to the Council of Justice at Batavia, if he did not do so within three days after the sentence had been pronounced, it was executed. At some out-stations the accused was not tried but immediately sent to Batavia. On the 21st of December, 1708, the execution of death sentences was expressly forbidden at any of the out-stations unless sanctioned by the Governor-General and Council at Batavia (z).

The Secretary of the Court, or "Eerste Klerk," was, as a rule, at the same time nominated "Sequester" or trustee of estates of persons who had died insolvent.

A committee of the Court, consisting of two or three members, were entrusted with different duties of a non-litigious character. They had to give authenticity to documents which, according to the laws of the Republic, could not be passed by a Notary Public. As a consequence, all commercial contracts were signed, and all transfers of landed property and registration of mortgages took place before them and the Secretary of the Council of Justice. In the absence of a clergyman, they acted as registrars of marriages. They exercised control over the "Sequester" (a).

As in Batavia, all out-stations possessed a "Curator ad lites" (a).

The out-stations were subject to the Governor-General and Council at Batavia, though often the governors and commanders attempted to exercise independent authority.

All jurisdiction was in the name of the States-General; and all general laws were required to have been approved of by the Council at home before they could be accepted as law throughout the whole of the East Indies. The Governor-General and Council, as well as all the governors at the out-stations, were therefore bound by the laws sanctioned by the Council of XVII or the directors, who invariably in matters of importance asked the

(z) Klerk de Reus, "Ueberblick," p. 171.

(a) Klerk de Reus, *ubi cit. sup.*, p. 171.

sanction of the States-General. They were guided in legal matters, according to the provisions of the general instructions of 1692 and 1650, by the Statutes of Batavia, the laws of the United Provinces as far as practicable, and, in the last resort, the Roman law, as it was interpreted in Holland.

**Ceylon.**—One of the most important out-stations was Ceylon. The first time the Dutch visited the island was in 1602, while their first permanent settlement was the building of a fort at Cottiaar in 1612. It was not, however, until war had broken out between them and the Portuguese that the Dutch supremacy was established throughout the maritime districts. In 1638 Batticalao was taken, in 1640 Galle and Negombo. In 1656 Colombo, the principal settlement of the Portuguese, fell into the hands of the Dutch, and this conquest, together with the surrender of Jaffna in 1658, completed the hold of the Dutch East India Company over the sea coast and lowlands of Ceylon. The Kandians remained free from their power.

The administration was placed under a governor and his "Politieke Raad," or "Raad van Politie."

The governor was more independent than many others, in so far as he was allowed to correspond with the Council of XVII direct. His official residence was at Colombo, while the other stations were spread all over the low country. Punto de Galle was the most important commercial town, and was recognised as such by being made the residence of a commander at the head of the Company's local affairs.

The judicial administration was entrusted to the Council of Justice at Colombo, which was until 1738 presided over by the governor, but after that date by the "Secunde" or "Second in Command." This council was the appellate tribunal for all civil and criminal cases regarding Europeans outside Colombo, and was a Court of first instance for persons domiciled within the jurisdiction of Colombo. Besides this Council, there were two other Courts of Justice, one at Jaffnapatam, and another at Galle. As Courts of first instance they had the same powers within the respective jurisdictions of Jaffna and Galle as the council had at Colombo, but an appeal lay from them to the council at Colombo. The jurisdiction over the whole island was divided between these three Courts, while at Trincomalie an inferior Court was established which was subordinate to the Court of Jaffnapatam. Over these Courts the governor exercised control,

not by way of appeal, but of supervision. He was entitled to order a revision of a civil judgment rendered by the Courts of Jaffna or Galle, and to suspend criminal sentences pronounced by any of the three Courts. He had the power to suspend the members of the Courts.

From the council at Colombo appeal lay to the Council of Justice at Batavia in civil cases involving more than a certain sum, and in criminal cases if affecting persons above the rank of serjeant (b).

All prosecutions in criminal cases before these Courts originated with the Fiskaal, who acted as a member of the Bench in civil cases. His functions were similar to those of the Fiskaal at Batavia.

A minor Court for town affairs only, called the "Civiele Raad," was established at the three towns above mentioned. To the Civiele Raad in Colombo appeal lay from the Dessave.

The Dessave was originally an important native chief. The Portuguese abolished the office, but they, and the Dutch after them, retained the title and applied it to the officer who, under the Dutch régime, was a European servant of the Company fourth in rank after the Governor of Colombo. He was charged with collecting the revenues, and numerous other duties. At the same time he exercised jurisdiction over natives in small matters. The "Civiele Raad" had to sanction all judgments before they could be executed (c).

Towards the middle of the eighteenth century, a new system was inaugurated by the creation of a special Court, called the "Landraad," with a view to relieve the Dessave from a multitude of legal discussions. "He referred to it all cases too complicated for his judgment, or which he had not leisure to decide, and from the above period the inhabitants could appeal from the decisions of the Dessave himself to the Landraad, whose forms of proceeding were simple, and the charges attending the few written deeds which these required were fixed at one-half of those of the three

(b) An elaborate review of the administration of justice by the Dutch East India Company in Ceylon was given by Mr. Cleghorn in his report to the Governor of Madras in 1799. Mr. Cleghorn had been appointed secretary and registrar of the records of the island of Ceylon in 1798. An extract from his work—

seemingly carefully made—appeared in the "Ceylon Almanac and Annual Register" for 1855. His statements should be compared with those of Mr. Klerk de Reus in his above-mentioned work, p. 170 *et seq.*

(c) Valentijn, "Oud en Nieuw Oost Indien," vol. v., part I., p. 307.

Courts of justice formerly mentioned, and to which appeals under certain restrictions could be made from that of the Landraad" (*d*).

The Landraad was presided over by the Dessave, and among its members were the Fiskaal and three or four native chiefs, viz., the Chief of the Mahabadde, the Maha Modliars, the Modliar of the Dessave, and the Thombo keeper.

At the same time a number of other "Landraden" were created for the districts of Chilaw, Jaffnapatam (which had three), Manaar, Galle, Matura, Trincomalie, Batticalao, and Putlam. On all of them the native element was represented. From these Courts appeal lay to the Council of Justice in whose jurisdiction they were situated. If these were the Courts at Jaffna or Galle, a further appeal could be made to the council at Colombo.

As regards the interior a Court sat twice a year, which was called "Landvergadering," and was composed of members of the Landraad and native chiefs who held their appointments from the Governor of Ceylon. No appeal lay from their decisions except to the Government (*e*).

As to the law administered in the Dutch Courts, there is no doubt that the Roman-Dutch law prevailed in the parts of the island which were occupied by the Dutch, and was administered to Europeans and natives indifferently (*f*), though, in accordance with the rules of Dutch administration, regard was paid to native customs and habits (*g*).

The Statutes of Batavia, both the Old and the New, were adopted for the Ceylon Courts, as appears from *van Cleef's* case, which was decided in 1778 (*h*). As to the Old Statutes this was done by resolution of the Governor and Council dated the 3rd of March,

(*d*) See Cleghorn's above-mentioned minute. He adds: "The Landraad was extremely popular, and its decisions were generally and justly respected. A Court of this kind, of easy access, is more particularly necessary in a country where the greater part of the lands are private property, where the revenue is paid in kind, and where, of course, a variety of little disputes arise between the landed proprietors and the farmers of the revenue." A similarly favourable opinion was expressed by Cameron in his Report already cited, pp. 69 and 70.

Similar Courts are at the present moment exercising local jurisdiction in Java and the other islands of the Netherlands East Indies.

(*e*) Valentijn, *ubi cit. sup.*

(*f*) Report of Charles Hay Cameron, p. 67.

(*g*) Valentijn, *ubi cit. sup.*, p. 267. Cf. also a decision by Berwick, D.J., in No. 59,572 D. C. Colombo, reported in 1 Browne's Ceylon Reports, Appendix A, pp. xiii. and xiv.

(*h*) Van der Straaten's Ceylon Reports, 1869—1871, Appendix A, pp. xxvii. *et seq.*

1666 (i). The date of the introduction of the New Statutes is not certain (k).

In 1758 a resolution was passed by the Governor and Council of Ceylon relative to succession to estates of intestates in which the rules laid down by the "Octroy" of the 10th of January, 1661, were adopted as the law in Ceylon, the Governor and Council not knowing of any law of later date which was in force in the Dutch East Indies (l).

When the judges in *van Cleef's* case, fifteen years later, were called upon to decide as to the rules of succession in force in the island, the New Statutes of Batavia had been passed in the meantime, and were duly recognised by them as "being the latest and most modern Law of the Capital of India on this subject," and ought to be observed (m). In passing judgment, the Court of Justice of Colombo decreed as follows, viz.:—"The Court directs the Commissioners Messrs. Berghuys and Reintons aforesaid to make the division of the estate left behind by the late Mr. Herman Jeronimus van Cleef according to the succession of the intestates or Law of Inheritance planned by the Old Statutes of Batavia; as, in respect to the Law of Inheritance of North Holland, the same does agree with the New" (n).

This is corroborated by Cleghorn in his above-mentioned Report. "Although these statutes have never received from the superior tribunals (*sic*) of the Republic the sanction of law, still their local authority has induced them to be adopted in all the colonies. . . . The statutes . . . now regulate the functions and duties of the different Courts of Justice and Police in Ceylon" (o).

Another corroboration of the introduction of the New Statutes is to be found in the notifications (1768—1770) repealing the 6th Article of the Provisions of the Statutes of Batavia on Slaves (*Lijfeigenen*), "prohibiting the sale of slaves to Hindoos, and others who are not Christians, for debt" (p).

(i) Memoir written by Mr. Zwaardekroon, once Commander of Jaffnapatam, and afterwards Governor-General at Batavia. Cf. *Karonchihamy v. Angohamy*, 8 Ceylon New Law Reports, p. 23.

(k) Answers given in 1830 to H. M. Commissioners of Inquiry. MS. referred to in *Karonchihamy v. Angohamy*, *ubi cit. sup.*, p. 10 *seq.* Cf. Wolfendahl Church Case, Grenier's

Ceylon Reports for 1873, Part III., p. 84, per Berwick, D.J. Cf. also the decision by the same learned judge in *Browne's* Ceylon Reports, *ubi cit. sup.*, p. xii.

(l) Van der Straaten, *ubi cit. sup.*, p. i. *et seq.*

(m) *Ibid.*, p. xxx.

(n) *Ibid.*, p. xxxi.

(o) Report of Cleghorn, *ubi cit. sup.*, p. 1.

(p) Collection of Legislative Acts of

Reference to *van Cleef's* case and the law of succession in force in Ceylon is made by Sir Hardinge Giffard, C.J., in *Dona Clara v. Dona Maria* (q).

Regarding the administration of justice, Governor C. J. Simons, on his departure for the Cape of Good Hope, stated in the instructions which he left to his successor in 1707 as follows, viz.:—"In order to reorganise the [administration of] Justice, which has been badly managed here till nearly the end of 1705, and of which I have often complained, the 'Blaffaart' has been ordered from Batavia, and having received it the further following orders regarding the [administration of] Justice have been inserted with it, as well those from Batavia, as those from the Fatherland. I have also had at the beginning extracts made of the operative parts of all the Plakkaten, successively promulgated, and ordered them to be reduced to a proper compendium in two heavy Volumes, which annually shall be publicly read to the people in the presence of the 'Fiskaal independent' " (r).

Particulars regarding the time and manner of the introduction of these laws are, however, wanting. A systematic search in the Dutch records at The Hague may clear up many points which are now obscure. This is indicated by (*inter alia*) the fact that special rules for the Dessaves were made in 1661, which received the sanction of the Governor-General and Council (s).

**South Africa.**—Another important out-station was the Cape of Good Hope, where, also, the council had the right to correspond directly with the Council of XVII in the Netherlands.

The settlement of the Dutch in South Africa dates from 1652. In consequence of a resolution passed by the Council of XVII on the

the Ceylon Government, Colombo, 1853, vol. i., p. 413.

(q) Ramanathan's Ceylon Reports, 1820—1833, p. 33. The difficulties expressed by the learned judge are considered in the text on pp. 100—105.

(r) Cf. Letter from Governor and Council of Ceylon to Governor-General and Council at Batavia, dated the 22nd of April, 1705, and their answer, dated the 22nd of June, 1705, MS. in the Record Office at The Hague. As to the meaning of "Blaffaart," cf. reso-

lution of Governor-General in Council at Batavia, dated the 20th of March, 1766, MS. in the Record Office at The Hague, and Van der Chijs, "Nederlandsch-Indisch Plakaatboek," vol. iii. Cf. Index.

(s) Valentijn, *ubi cit. sup.*, p. 165. As to legislation in Ceylon during the period of the Dutch supremacy, cf. the articles contributed by J. P. L[ewis] on "The Dutch in Ceylon" in the Ceylon Literary Register, vol. iii., pp. 350, 356, and 364.

30th of August, 1650, to establish a victualling station at Table Bay, three ships were sent by them under the command of Jan van Riebeeck, who on the 8th of April, 1652, set foot on shore at the place of his destination, and at once marked out a site for a fortress. Next he made a plantation of vegetables and medicinal herbs for ships touching there. The victualling station soon grew to a colony whose agricultural character distinguished it from all the others, which were entirely commercial.

On that account the settlement contained a proportionately larger number of "free citizens," though the Government remained entirely in the hands of the company's servants. The council first consisted of the commander and some three or four of his officers.

In October, 1656, a division was made in the council. When sitting in its administrative capacity as a "Raad van Politie," or "Politycke Raad," it consisted of three members, viz., the commander, the "secunde," and one other of the servants of superior rank. When sitting in its judicial capacity, either as a Court of Justice or as a military tribunal, three members were added.

A further change and extension of the judiciary was made under the governorship of van der Stel in 1682. On the 30th and 31st of August of that year inferior Courts were created for the settlement of minor disputes. In Stellenbosch a board of "Heemraden" was established, consisting of four leading inhabitants who gave their services gratuitously (*t*), and at Cape Town a similar Court was created, consisting of two servants of the East India Company and two burghers, which was styled the Court of Commissioners for Petty Cases (*u*).

Three years later, in 1685, the number of members of the "Raad van Politie" was increased, and thenceforward it consisted of eight members. The Court of Justice was also reconstituted, and was made to consist of nine members, while the "Fiskaal" officiated as public prosecutor (*x*).

At the same time the first "landdrost" was appointed at Stellenbosch with administrative and judicial powers. His duty was to preside over the Court of "Heemraden," whose civil jurisdiction was limited to cases in which the amount in dispute did not exceed £10 (*x*).

(*t*) McCall Theal, "History of South Africa," 1897, vol. i., p. 254.

(*u*) *Ibid.*, p. 261.

(*x*) *Ibid.*, pp. 266, 267.



In 1688 the office of "Fiskaal," or public prosecutor, became an independent office.

**The Law in Force.**—As to the law which these Courts had to administer, there can be little doubt. When van Riebeeck, in December, 1651, left Texel as commander-in-chief of his little fleet, he had among his instructions a copy of those which were handed by the Council of XVII to all commanders of their fleets, and these comprised the above-mentioned instructions of 1632. The settlement of Table Bay was to form part of the East Indies, and was placed under the Governor-General in Council at Batavia, though direct correspondence was going on between the council at the Cape and the Council of XVII, and the commanders—since 1690 called governors—of the colony were appointed by the latter.

The laws established by the East India Company for their servants and for all Dutch citizens in their possessions were the same for all the Company's stations in so far as they were not overruled by the special regulations which were made for local purposes. In that sense the instructions of 1632, viz., that justice should be done according to the laws of the Netherlands, formed the general basis of the law in force at the Cape.

The Statutes of Batavia of 1642 were adopted by the directors of the East India Company, and observed at all the stations. Most probably the first settlement under van Riebeeck, soon after its establishment, received a copy to be used in the administration of justice in the new colony. It was certainly used in the beginning of the eighteenth century, as appears from instructions left in 1708 by the Commissioner, C. J. Simons, ex-Governor of Ceylon, to the new Governor, van Assenburg: "The Statutes of Batavia are certainly clear, but short, and therefore do not make precise provisions regarding many matters which occur daily." In order to supplement these Statutes and at the same time lay the foundation of a law library, he left his successor a list of law works to be obtained from Batavia, as likely to be of service at the Cape, "and to which such others might be added afterwards as might prove to be useful, the collection to be left to the care of the usher of the Court" (y).

A few years later, on the 31st of January, 1715, the Council of Justice, stating that then "no standing instructions had been drafted

(y) Valentijn, "Oud en Nieuw Oost Indien," vol. v., part ii., p. 138.

or approved for the administration of justice, and that it was especially uncertain whether the Statutes of India might be used and observed as a foundation of the laws together with the Roman law and the law of the present day (without invalidating the plakkatén and ordinances which have successively been promulgated here)," petitioned the Governor and Council to publish instructions "for the due observance of the Statutes of India together with the Roman law and the laws of the present day, or as may seem good to them, and to judge accordingly as occasion arises, in order that the Council [of Justice] might observe these [instructions] for the future."

On the 12th of February, 1715, the Governor and Council accepted this suggestion, and passed a resolution to the effect that "in future regarding matters and actions at law the Statutes of India shall be followed in so far as these are not contrary to the plakkatén, ordinances, and decisions from time to time passed and issued by the Government (z)."

According to the "Daghregister" or "Journal" of the Cape for the year 1715, on the 15th of February following, it is stated "to-day in the forenoon, after the previous tolling of the bells, the general 'plakkaat' was renewed from the 'puye' (steps) of the Town Hall, and published (or affixed) everywhere at the proper places."

Unfortunately, the text of this general plakkaat cannot be given, as neither the plakkaat nor the proclamation are among the records at The Hague. The connection between the resolution of the 12th of February, and the publication which took place on the 15th of February, 1715, is given by a civil servant of the English establishment in 1822, in his description of the condition and state of the law and its administration at the Cape in the eighteenth century (a).

"The judgment," he writes, "or decision of the Court, after hearing all which the advocates have to allege in their speeches and replies, is founded upon the colonial laws, and those enacted for the administration of justice in Dutch India, the latter of which were collected in one body, towards the end of the seventeenth century under the title of 'Statutes of India,' and declared to be law in this

(z) Copy Book of Resolutions passed by the Governor and Council of the Cape; MS. in the Record Office at The Hague. Cf. also McCall Theal, *ubi. cit. sup.*, pp. 319—320.

(a) "State of the Cape of Good Hope in 1822," by a Civil Servant of the Company (William Wilberforce Bird), London, 1823, p. 10.

colony, by proclamation of February, 1715; and the Court of Justice is directed, in points, where these laws might be found deficient, to recur to the civil law (*Corpus Juris Civilis*); but as there are some particulars in the Dutch law not regulated by the civil law, recourse must then be had to the law of Holland, which the Court of Justice has been instructed to observe."

As the "Statutes of India"—a wider term indicating that the Statutes of Batavia had become a guide for the whole of the Dutch East India Company's possessions (*b*)—refer to the Roman law (*c*), the above interpretation should be read as follows, viz.: that these Statutes should be observed as the law of the colony, together with the amending plakkaten and ordinances issued by the Governor in Council (*d*), and that these should be interpreted in the same way as the law from which they had been derived; that in all cases in which these laws thus amended and thus interpreted were silent, recourse should be had to the "laws, statutes and customs of the United Netherlands," and that in all matters which were not treated of by them the Roman law should be followed.

The rules laid down in 1715 and thus explained are still to be considered as the law of interpretation of the Roman-Dutch law in South Africa.

Previous to this general legislation, viz., in 1714, the Orphan Masters had petitioned the Governor in Council, and observed "that up to the present moment no positive regulations or orders had been given to them as to the manner in which they should act in questions of succession *ab intestato* regarding the property of orphans."

On the 19th of June, 1714, the Governor and Council considered this petition, and decided and ordered that the Orphan Masters

(*b*) Statute Law of the Cape of Good Hope (Capetown 1862), Preface, p. v., "... There are also about three volumes containing an alphabetical digest of the laws for the government of the Dutch East India possessions, which was passed by the Dutch East India Company in Holland and by the Government of Java, known as the Statutes of India; and . . . these laws, so far as applicable to the Colony, had force within it, as having been part of the Dutch East India Company's possessions."

(*c*) See p. 102.

(*d*) Under the Dutch Government, the Governor and the Council had legislative power in the Colony, subject to the authority of the Governor-General in Council, the Commissioners sent from time to time from Holland and the Council of XVII. Their ordinances, do, unless modified or repealed by subsequent legislation, still form part of the *lex scripta* of the Colony. Van Breda v. Silberbauer (1869) 6 Moore P. C. (N.S.) at p. 333.

should observe the provisions of the 19th, 20th, 21st, 22nd, 23rd, 24th, 25th, 26th, 27th, 28th, and 29th articles of the Political Ordinance of the 1st of April, 1580, and its interpretation by the States-General dated the 13th of May, 1594, "in so far as these have been introduced by the Octroy (dated the 10th of January, 1661), granted by the said States to the Company as a general law and guide in matters of succession *ab intestato* for all countries, towns, and people in the East Indies (e)."

This "Octroy," granted by the States-General in 1661 had, in the beginning of 1662, been sent from Batavia to "all colleges of justice, orphan masters, governors, commanders and chiefs of the places which were within the dominions of the Company (f)."

On the same 19th day of June, 1714, the Governor and Council issued a "plakkaat" whereby it was ordered that "inasmuch as in this Government [there] has remained in disuse and has not been put in working order the registering of 'kusting brieven,' bonds of sheriffs and orphan masters, and other bonds passed before members forming a committee of the council . . . everyone shall be obliged to show all such 'kusting brieven' within four months after their date at this town hall, and to furnish to the secretary an extract or the contents of all bonds, which are in their custody, and whereby some persons or others are bound, and this shall also have to be done whenever in future any of these bonds are obtained, in order that a proper register can be formed and kept thereof" (g).

The Dutch system of registration of titles to immovable property had been introduced in 1686 by ordinance dated the 1st of July of that year (h).

As has already been observed in connection with Ceylon, a systematic search and publication of the records now in existence

(e) Copy Book of Resolutions passed by the Governor in Council, MS. Record Office, Hague. Tennant, "The Notary's Manual" (1902), p. 168, does not quote the original words, and thus suggests an ambiguity which otherwise does not exist. Cf. South African Law Journal, 1904, "History of the Roman-Dutch Law," by J. W. Wessels, p. 343.

(f) Van der Chijs, "Nederlandsch-Indisch Plakkaatboek," vol. ii., pp.

340—341.

(g) Cf. MS. in the Record Office at The Hague.

(h) McCall Theal, *ubi cit. sup.*, pp. 319—320. Collections of these local enactments—"plakkaten" and ordinances—seem to have been made from time to time. McCall Theal, in his history, vol. i., pp. 319—320, mentions a revision of them which was made in 1686.

at Cape Town and The Hague might lead to the elucidation of many obscure points which render it well-nigh impossible to do justice in controversies in which the applicability of particular maxims of Roman-Dutch Law is involved.

*C. Dutch West India Company.*

**British Guiana.**—In 1621 the Dutch merchants who traded with the North Coast of South America formed a West India Company on the same lines as the sister Company for the trade to the East Indies, and obtained a charter from the States-General on the 8rd of June, 1621. This charter gave the merchants similar rights with regard to that part of the world situated to the west of Africa, the West Coast of Africa included, as the charter of the East India Company gave to the merchants trading with the East.

The constitution of the Company was formed on similar lines to those of the East India Company. The five different chambers (Amsterdam, Zeeland, De Maas, Noorderkwartier and Stad en lande), representing the shareholders in the different towns and districts, sent their representatives to the Council of XIX, who had the management of the Company's affairs. After the Company had been reorganised in 1674, this council dwindled down to the number of ten, and were called "The Ten"; they gradually absorbed the whole management of the Company.

The Company possessed at the time of its foundation, besides a portion of the New Netherlands (afterwards New York in North America), and Fort Nassau on the coast of Africa, a settlement in Essequibo. This was followed in 1684 by the conquest of the island of Curaçao. In 1657 a settlement was made by the Zeeland merchants on the Pomeroon. It was not until the year 1750 that the colony of Demerara was founded, which was then placed under one government with Essequibo.

In 1627 the Dutch founded the colony of Berbice. When the Treaty of Peace of Breda was signed (31 July, 1667), the colony of Surinam was transferred to the Dutch in exchange for the New Netherlands which were granted to England. Both settlements of Surinam and Berbice were separate Dutch Colonies and never belonged to the West India Company.

In 1791 the charter of the West India Company came to an end. It was not renewed, and the Company's possessions were taken over by

the States-General. Thus they remained nominally under the government of the Republic of the Netherlands and its political successors during the Napoleonic period, but actually the territories of Demerara, Essequibo, and Berbice, with the exception of a short interval in 1802—1803, were occupied by British forces from 1796, and in 1814 these colonies were definitely ceded to Great Britain by a convention signed in London between this Power and the Netherlands (*i*).

**The Law in Force.**—In reading the history of the West India Company, it should be borne in mind that the Chamber of Zeeland played the principal part in the maintenance of the Dutch settlements on the American coasts. This preponderance of Zeeland influence can be traced distinctly in several instances in the legal history of these colonies as distinguished from those under the East India Company, in which the law of the province of Holland—and specially the towns of North Holland—had a decisive influence.

On the 18th of October, 1629, the States-General sanctioned the order drawn up by the West India Company for the government of the West Indian colonies, and called an "order of government, as well regarding the police as regarding the administration of justice in the place and places conquered and to be conquered." Arts. 55 to 62 inclusive regulate the principles according to which justice should be done as well as the rules of procedure in criminal and civil matters.

Art. 59 runs as follows: "In matters of marriage, rights between husband and wife, in intestate successions and the drafting of wills, and all that is connected therewith, there shall have force of law over all countries, towns, and peoples belonging to the dominions of the States-General and the West India Company, and everywhere be observed as law, the political ordinance issued by the States of Holland in the year 1582 (*sic*), as its provisions are best known, can be easily used as the common custom of South Holland and Zeelandt, and will introduce the least obscurity and change."

(*i*) For the history of the Dutch colonies under the West India Company, cf. Joannes de Laet, "Historie ofte Jaerlijck Verhael van de Verrichtinghen der Geoctroyeerde West-Indische Compagnie" 1644, (containing a copy of the company's charter). O. van Rees, "Geschiedenis der Staathuishoudkunde in Neder-

land," vol. ii., and authors quoted, 1865; P. M. Netscher, "Geschiedenis van de Koloniën Essequibo, Demerary en Berbice," 1888; James Rodway, "History of British Guiana," 3 vols., 1891; C. P. Lucas, "Historical Geography of the British Colonies," 1890, vol. ii., pp. 265—280, and authors quoted on p. 292.

Art. 60: "All conveyances, as well as bonds or mortgage deeds, general or special, of houses, lands and grounds or 'Erven,' to grant proprietary rights or real rights, shall be passed before the said three members of the committee of civil justice, and the letters to be made thereof shall have to be sealed by them, and thereupon be registered in a register to be kept by the assessor, also in conformity with what is customary in the United Provinces."

Art. 61: "In other matters of diverse contracts and transactions the ordinary 'beschreven Rechten' shall be followed (*k*)."

Similar rules were adopted on the 23rd of August, 1636, for the Company's possessions in Brazil, and on the 5th of July, 1642, for the Company's possessions on the West Coast of Africa, "of which San Paulo de Loando shall be the capital (*l*)."

The history of the West India Company was not, however, one of quiet and continuous expansion, nor did the Company succeed in developing a powerful monopoly like the company trading in the East. Its declining authority, the continuous shifting of its servants and the reduced means on which the company had to exist after the war with Spain had come to an end, led to many contraventions of the law laid down in the above order of government. The observance of these regulations left much to be wished for, and continued appeals were made by the Governor and Council to the board of directors for regulations to ensure the better observance of the orders given regarding intestate succession and other matters.

A request for proper regulations regarding intestate succession reached the States-General from the Governor and Council of Surinam in 1719, upon which the directors of the Company were asked to give their opinion. This was given by letter of the 27th of June, 1720, which, however, remained seemingly unobserved for over twenty years. Only in 1742 the States-General passed a resolution in favour of adopting the regulations set out in the above letter, viz.: the provisions of the "Plakkaat" of the 18th December, 1599, together with some modifications regarding persons in the service of the Company who died on the outward voyage (*m*).

On the 4th of October, 1774, the two following resolutions were

(*k*) "Groot Placaetboek," vol. ii., p. 1236 *et seq.* Brazil, but the settlements formed there were reconquered by the Portuguese in

(*l*) *Ibid.*, Bk. v., tit. 5, parts 9 and 10, pp. 1247 *seq.* The jurisdiction of

(*m*) "Groot Placaetboek," vol. vii., p. 1573.

passed by the States General as to the law which should prevail in all the West Indian possessions, not only regarding intestate succession, but also, as far as Essequibo and the newly founded colony of Demerara were concerned, all matters in which the inhabitants might need guidance from the law.

The words of these resolutions are so clear and describe the situation so well, that nothing better can be done than to give them verbatim (*n*).

The former runs as follows :—

“Received a letter from the Representative of His Highness (*o*) and the Directors of the General Chartered Netherlands West India Company deputed by the respective Chambers at the Meeting of Ten, being assembled within Amsterdam, and there written on the 22nd of last month, to the effect that it had pleased their High Mightinesses in the year 1619 (*sic*) (*p*) to make an Order of Government for the Places conquered and to be conquered in the West Indies and to provide more particularly therein regarding the law of succession, viz.: that in regard to intestate successions there should be observed the Political Ordinance of the States of Holland of the year 1580; but that it had been apparent to them, that this Order of Government had remained unobserved in a number of Places in the West Indies which formed part of the dominions of their High Mightinesses and the General Chartered West India Company;

“On the contrary, that regarding the law of succession some had observed the Political Ordinance, others the laws and customs and Ordinances of the Places whence the deceased had sailed, and that the latter laws—as far as they could be found in the old Books—had guided the respective Chambers in distributing the estates of the deceased; and that it had seemed to them that the reason thereof was the difference in the law regarding intestate successions prevailing not only as between some of the Provinces of the Republic but also as between the towns in Holland;

“That their High Mightinesses already in the year 1752 had been informed by the Government of the Island of Curaçao that the said Order of the Government had not been observed, and that

(*n*) Rodway, in his “History of Guiana,” vol. i., p. 24, only gives some of the particulars.

(*o*) The Prince of Orange, who was President of the West India Company.

(*p*) Should be 1629.



on the contrary the rules of the 'Aasdom' law of succession prevailed in accordance with the Plakkaat of the States of Holland of the 18th of December, 1599, and that far from this being disapproved by their High Mightinesses they had declared all successions valid and legal which had previously devolved in conformity therewith, and confirmed the customs regarding the same ;

"That under these circumstances they had been of opinion—in order to prevent difficulties and lawsuits which might result from ignorance of the different laws and customs which not only prevailed in the Province of Holland, but also existed as between the Towns in the Province of Holland, and from the non-observance of the Order of Government—that they should address their High Mightinesses and petition them that it might please them to reconsider the question as to which law of succession should be observed regarding intestate successions for persons in all the countries and towns which formed part of the dominions of their High Mightinesses and the West India Company, as well as for persons who sailed thither and happened to die on the outward voyage ;

"After consideration, it had been approved and decided, to order and adopt herewith, that the intestate succession henceforward in all Places in the dominions of their High Mightinesses and the General Chartered West India Company shall be regulated according to the rules of the 'Aasdom' law of succession in such manner as it is provided in the Plakkaat of the States of Holland dated the 18th of December, 1599, that this law shall be observed with regard to such persons as have lived in the said Places and have died there, and also with regard to such persons who after having lived there, happen to die on their homeward voyage ; that amongst these shall be comprised the Political, Ecclesiastical and Military servants, officers and soldiers, who, whilst in the service of the General Chartered West India Company and living in the respective Places in the West Indies which form part of the dominion of their High Mightinesses and the said Company, happen to die on their homeward voyage ;

"Secondly, that with regard to the captains and petty officers and sailors on the ships which sail from these countries to the said Places, as well as regarding the Political, Ecclesiastical, and Military servants, officers and soldiers who, having entered the service of the West India Company, happen to die on the outward

voyage, there shall be followed and observed the law of succession of those Places whence they sailed;

“Thirdly, that with regard to those who depart of their own free will, and not in the service of the West India Company, in order to settle themselves in the said places, but who die before they have arrived there, there shall be followed such law of succession as is in force at the place where they last lived;

“That with regard to those who being domiciled in this country and whilst remaining domiciled here depart for the said places, and who happen to die there, there shall be followed such law of succession as is in force at the place of their domicile in these countries.

“And that, further, the regulations made in the respective places in the West Indies, and by the Chambers in these countries regarding successions in conformity with the old customs previous to the publication of these rules, shall be declared valid and legal as they are hereby declared to be valid and legal;

“And extract of this Resolution of their High Mightinesses shall be sent to the Representative of His Highness and the Directors of the West India Company, at the Council meeting of Ten, together with the order to have these rules published at such places and in such manner as shall be proper, in the name and on behalf of their High Mightinesses.”

The second resolution of this date commences with the request of the Council of Ten that the claims of the Company against their servants should be declared to rank first in the case of the distribution of their estates, and then continues:

“Further on the remonstrances made by the Director General and Council in Essequibo, and by the Commander and Council in Demerara, considering it also highly necessary that they should be informed what Laws, Plakkaten, Resolutions, and Ordinances they would have to observe, recommending to their High Mightinesses’ consideration whether it might not please them to order, that in Essequibo and Demerara there should be observed and should be taken as a guide *in judicando* by the Director General and Council and the Commander and Council at those places the Dutch laws in general, and in particular all Laws, ‘Plakkaten,’ Resolutions and Ordinances given or still to be given or approved of by their High Mightinesses or the Council of Ten [and transmitted] to the Director General and Council in Essequibo and Demerara;

"That in matters of marriage they should be governed according to the 'Ordonnantie op de Policien' passed by the States of Holland and Westfriesland on the 1st of April, 1580;

"Regarding intestate successions they should be governed according to the rules of the 'Aasdom' law of succession, as set out in the 'Plakkaat' of the States of Holland and Westfriesland dated the 18th of December, 1599;

"That further, within the jurisdiction there should be followed the rules of procedure adopted by the Council of Ten, and regarding criminal procedure the Criminal Ordinances and Manner of Proceeding of the year 1570, as far as the same can be observed in accordance with the Chamber's constitution, and further in all matters which have not been specially regulated, the procedure should be according to the 'beschreven Regten.'"

The States-General adopted all the requests of the Council of Ten in the same words as are used in the passage quoted above, and ordered that this resolution should be made known in the same way as the resolution first quoted (*q*).

It appears from the records that the resolutions were sent out to the authorities in the West Indies and published in compliance with the request of the States-General (*r*).

On the same date the States-General gave their approval to certain regulations (in 38 articles) for the administration of justice, and the rules of procedure in the rivers Essequibo and Demerara (*s*).

These provisions have remained ever since the basis of Roman-Dutch law in the colonies where they were promulgated, and at the time of the capitulation to the English, on the 18th of September, 1808, it was specially stipulated that the Roman-Dutch law should remain the common law of the country (*t*).

The Government and the judiciary were regulated in these colonies on the same lines as they were under the East India Company. The governor or commander had the highest authority

(*q*) "Resolutions of the States-General," 1774, i., pp. 589 *et seq.*  
 "Second Report of the Commissioners of Enquiry into the Administration of Criminal and Civil Justice in the West Indies and South American Colonies," 14th April, 1828, P. P.

557, Appendix B., p. 212.

(*r*) Rodway, *loc. cit.*, vol. i., p. 247.

(*s*) Second Report, etc., *loc. cit.*, p. 203.

(*t*) *Ibid.*, Appendix A., p. 53, 5th question.

and governed with a Council, which was divided into a Council of Policy and a Council of Justice, over each of which he presided (u). The authority of these Councils appears to have been similar to the authority of the Councils in the different parts of the East Indies, with this distinction, however, that there was no Governor-General and Council nor other central Government.

Public prosecutions were in the hands of an Advocate Fiscal, who at the same time was the head of the Police.

A complete review of the administration of civil and criminal justice in these colonies at the beginning of the 19th century is given in the Report of the Commissioners of Enquiry, the results of whose labours were laid on the table of the House of Commons on the 14th of April, 1828'(x).

Regarding the law in force in these colonies and the authority whereby the law is constituted, the Report mentions the old law of Holland, in accordance with the old charter, unless otherwise enacted, peculiar vernacular laws, and the Roman law *in subsidium*, particularly with regard to slaves. As to the value attached to this system of Roman-Dutch law in these countries, the Commission adds that "The examiners in both colonies concurred in stating, that the civil law in force there . . . is simple, and well adapted to the wants and usages of the people (y).

(u) "Groot Placaetboek," vol. iv., p. 1337, "Instructionen voor den Gouverneur van Suriname," 5th of January, 1689.

(x) Second Report, etc., p. 3 and question 5 in Appendix A. As to the authority of the civil law in these colonies, the opinions of the witnesses are remarkable. The President of the Court in Demerara says that it is resorted to "when authorities are not to be found in the writers on the law of Holland," while the Fiscal of the same colony remarks that "it is the principle or basis on which our practical structure has been

established." Yet, in citing the books which they considered as of the highest authority in the Colonies, the President quotes exclusively (with the exception of van der Linden) the names of the great commentators on Civil Law, viz., Voet, Matthæus, and van Leeuwen, while the Fiscal, in answer to the same question, places in the first rank Grotius, van der Linden and Merula. As to these books, see the answers to the tenth and eleventh questions in Appendix A., pp. 54, 55.

(y) *Ibid.*, p. 3.

## PART II.

---

### JURIDICAL CONSTITUTION OF BRITISH DOMINIONS, EXCLUSIVE OF THE UNITED KINGDOM.

#### INTRODUCTION.

**"British Possession," "Colony," and "British Islands" defined.**—According to the Interpretation Act, 1889 (*a*), a "British Possession" means any part of His Majesty's dominions, exclusive of the United Kingdom; and, according to s. 18 (3), a "Colony" means any part of His Majesty's dominions exclusive of the British Islands and of British India. The "British Islands" include, according to s. 18 (1), the United Kingdom of Great Britain and Ireland, the Isle of Man, and the Channel Islands. The Isle of Man and the Channel Islands come, therefore, within the definition of British possessions, but are not Colonies. The other British possessions in Europe,—Gibraltar, Malta, and Cyprus,—though not Colonies in the ordinary acceptation of the term, are Colonies within the definition. Colonies are acquired by conquest, by cession under treaty, by occupancy (as "plantations"), and by title of descent. All Colonies are subject to the legislative authority of the British Parliament (*b*), and are entitled to the protection of the Crown against foreign aggression. In the case of Colonies acquired by conquest or cession the existing law of the territory prevails till displaced by some act of the sovereign power (*c*). British subjects cannot take possession in their own right of a foreign country. A country conquered by the British arms becomes a dominion of

(*a*) 52 & 53 Vict. c. 63, s. 18 (2).

(*b*) The object of the Colonial Laws Validity Act, 1865, was "to preserve the right of the Imperial Legislature to legislate even for the colony, although a local legislature had been given, and to make it impossible, when an Imperial statute had been passed expressly for the purpose of governing that colony, for the colonial legisla-

ture in that sense to enact anything repugnant to an express law applied to that colony by the Imperial legislature itself." Lord Halsbury in *R. v. Marais* (1901), 85 L. T. at p. 365.

(*c*) *Campbell v. Hall* (1774), 20 St. Tri. 323; *Ruding v. Smith* (1821), 2 Hagg. C. R. at p. 382; 1 St. Tri. (N.S.) 1062.

the King in right of his Crown, and is necessarily subject, therefore, to the legislative power of the Parliament of Great Britain (*d*). In the case of plantations the settlers take with them so much of the law of England as is applicable to the conditions of the Colony (*e*), but no Act of Parliament passed after a Colony is planted is construed to extend to it without express words showing the intention of the Legislature that it should do so (*f*). A Colony acquired by hereditary descent retains its own laws till they are displaced by Parliament. The validity of laws made by Colonial Legislatures is established and defined by the Colonial Laws Validity Act, 1865 (28 & 29 Vict. c. 63). A "British Settlement" is defined by the Act of 1887 (*g*) to mean any British possession which has not been acquired by cession or conquest, and is not for the time being within the jurisdiction of the legislature of any British possession.

In discussing, in this part of the volume, the juridical systems of the various British Possessions, the British Islands exclusive of the United Kingdom will first be dealt with; then the Mediterranean possessions of the Crown; then the Empire of India; and then the Colonies in due order. In connection with the system in force in British India the position of certain tribunals presided over by British political officers in some of the Protected States will also be considered. The last chapter of this part will deal with British Courts of Justice exercising ex-territorial jurisdiction in various places; and, in view of the peculiar constitution of the Courts in Egypt and the relations to that country of the British Government, the juridical system now in force there will also be described in that section.

(*d*) Tarring's Law of the Colonies, pp. 30, 31 *seq.*, also 2 P. Wms. 74, 75.

(*e*) 2 P. Wms. 75. See also Whicker v. Hume (1858), 7 H. L. C. at p. 161; Jex v. McKinney (1889), 14 A. C. 77; Canterbury (Mayor, &c., of) v. Wyburn [1895] A. C. 89; Lauderdale Peerage, (1885), 10 A. C. at p. 744; and Quan

Yick v. Hinds (1905), 2 Australia C. L. R. 345, where the authorities are reviewed.

(*f*) Imperial statutes relating to crime come into force in the colony of Newfoundland one year after their enactment, see *infra*, p. 235.

(*g*) 50 & 51 Vict. c. 54.

## CHAPTER I.

### BRITISH ISLANDS, EXCLUSIVE OF THE UNITED KINGDOM.

**Isle of Man** (*h*).—**Political History**.—The Isle of Man was occupied in early times by a branch of the Celtic family (*i*), from whom it was probably conquered in the general Western invasion of the Scandinavian Kings of Northumbria about 795 A.D. (*k*). The island remained under Danish or Norwegian rule until purchased by Alexander III. of Scotland in 1266 (*l*). Prior to 1290, however, it came under the suzerainty of Edward I. of England, and during the next century was alternately from time to time under the dominion of the English and Scottish Kings, and was granted by them to a succession of feudatories (*m*). In 1406 King Henry IV. granted the island, with its castles and royalties, to Sir John Stanley, his heirs and assigns, on the service of rendering 2 falcons to the Kings of England on their coronation (*n*). In 1649 the Island was conferred by the Parliament on Lord Fairfax, the title of "Lord," which had previously been adopted by Thomas, second Earl of Derby, being used instead of that of "King" (*o*). In 1765 John, the third Duke of Atholl, sold all his rights as sovereign of the Isle of Man to the British Government for £70,000, an additional compensation being subsequently granted (*p*). In 1828 all the

(*h*) Kindly revised by His Honour Stevenson Moore, First Deemster.

(*i*) See Moore's "History of the Isle of Man," vol. i., p. 48.

(*k*) *Ibid.*, p. 82.

(*l*) *Ibid.*, p. 181.

(*m*) *Ibid.*, pp. 184 *et seq.*

(*n*) See article by the Attorney-General of Isle of Man, "Law Mag. and Review," 1902, vol. xxvii., p. 130.

(*o*) *Ibid.*, and Moore's "Hist.," vol. i., p. 254. On the grant of the island by letters patent of James I., a private Act was passed making it inalienable against the general heirs: Sodor and Man (Bishop of) *v.* Derby (Earl of)

(1751), 2 Ves. Sen. 337; and see also Derby (Earl of) *v.* Atholl (Duke of), (1748—1749), 1 Ves. Sen. 202.

(*p*) 45 Geo. III. c. 123. See the Isle of Man Purchase Act, 1765 (5 Geo. III. c. 26), the preamble of which contains a full recital of the successive titles to the island. See also 45 Geo. III. c. 123, and Report of Committee of Privy Council on Isle of Man Port Petition, 1805, No. 64; Walpole's "Land of Home Rule"; Clark, "Col. Law," p. 723; "Encyclo. Laws Eng.," tit. "Man, Isle of"; Com. "Dig.," tit. "Navigation," F. 2.

manorial and other remaining rights and privileges of the Dukes of Atholl were bought by the Crown (*g*). In the following year an Act was passed placing the land revenues and other possessions thus acquired under the control of the Department of Woods and Forests (*r*).

**When Bound by Acts of Parliament.**—Under its former lords the Isle of Man was not (*s*), as it is not now (*t*), bound by Acts of the Imperial Parliament unless expressly or by necessary implication extended to it; and an appeal lay from the Lord of Man to the King in Council. The Isle of Man, although a dominion, is not a "foreign" dominion of the Crown (*u*). It is not within the United Kingdom (*x*), but it is included, for the purposes of the Interpretation Act, 1889 (*y*), and of every Act passed after its commencement (January 1st, 1890), unless the contrary intention appears, in the expression "British Islands" (*z*).

**Law in Force.**—The law of the Isle of Man, apart from English statutes expressly or by necessary implication extended to it, consists of the common law of the island, and of the Acts of Tynwald (*a*). The Governor, the Council, and the House of Keys

(*g*) Cf. 12 Geo. I. c. 28, s. 25; 5 Geo. III. c. 26; and 6 Geo. IV. c. 34.

(*r*) Cf. 10 Geo. IV. c. 50.

(*s*) Sodor and Man (Bishop of) *v.* Derby (Earl of), *ubi supra*, at p. 345.

(*t*) Jenkyns's "British Rule and Jurisdiction beyond the Seas," p. 41.

(*u*) In *re Brown* (1861), 5 B. & S. 280; 33 L. J. Q. B. 193, where it was held that the writ of *habeas corpus* runs to the Isle of Man at common law, and that the statute 25 Vict. c. 20, prohibiting the issue of such a writ from England to any foreign dominion of the Crown possessing Courts competent to grant it, did not apply to the Isle of Man; and see In *re Crawford* (1849), 13 Q. B. 613; 7 St. Tri. (N. S.) 961.

(*x*) *Davison v. Farmer* (1851), 6 Exch. 242; 20 L. J. Ex. 177. Warrants of the Bankruptcy Court in England may now be executed in the Isle of Man (B. A., 1883 (46 & 47 Vict. c. 52), s. 119).

B.C.L.

(*y*) 52 & 53 Vict. c. 63.

(*z*) S. 18 (1). So also the Isle of Man was not "beyond seas" for the purposes of the Real Property Limitation Act, 1833 (3 & 4 Will. IV. c. 27). See s. 19. But absence "beyond seas" is now excluded from the list of disabilities (Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 4).

(*a*) In *Cain v. Cain* (1838), 2 Moo. P. C. 222; a common law rule that a widow is entitled to dower only *dum sola et casta vixerit* was held proved, although a law of June 24th, 1687 (Act of Tynwald), enunciating it as an "ancient customary law" of the island, was never inserted in the printed laws of the island. This law was, however, found in a MS. work, Parr's "Abstract of the Laws of the Isle of Man." Parke, B., observed that the rule above referred to was recognised in all the authorities, though the particular ordinance embodying it had not been printed. As to the law of the Isle of



constitute the Court of Tynwald, which, amongst its other functions, has the control of the finances of the island, subject to the approval of the Treasury. Bills which pass the Council and the House of Keys require the assent of the King in Council, and do not become law till they have been promulgated at a meeting, usually held on July 5th (Tynwald Day) in each year, with special ceremonies on Tynwald Hill (*b*).

The method, just described, of promulgating statutes in the Isle of Man was altered by the Promulgation Act, 1895. Under that Act, when an enactment is to be promulgated from Tynwald Hill, in accordance with ancient custom, there is to be read a brief statement in Manx and in English showing the object and purport of the Act, and the Royal assent, and this, together with the reading of the title of the Act, is to be held to be the promulgation. After the promulgation is over, the certificate or attestation of the promulgation, written at the foot of the Act, is to be signed by the Governor and Speaker, instead of, as under the former practice, by all the members of the Legislature.

**Courts of Law: High Court of Justice.**—In the Isle of Man there is a High Court of Justice, of which the Governor, called the President, the Clerk of the Rolls, and the two Deemsters are judges (*c*), and which unites the following former Courts: The Court of Chancery, the Court of Exchequer (*d*), the Court of Staff of Government (including any judicial authority of the Governor), and the Court of Common Law, the Deemsters' Court (*e*), and the Court of Admiralty (*f*). The High Court is a Court of

Man generally, see Johnson's "Manx Jurisprudence"; the Collection of Statutes by Mills; and the revision by Deemster Gill containing the statutes from 1417—1895; also "Report of the Isle of Man Commissioners," 1792, described *per cur.* in Att.-Gen. of Isle of Man *v. Cowley* (1858—1859), 12 Moo. P. C., at p. 41, as a work of very high authority. Sir William Grant was a member of the Commission.

(*b*) Jenkyns's "British Rule and Jurisdiction beyond the Seas," p. 39. The tendency in modern times in the Isle of Man has been to assimilate the local legislation to that of England.

See a note on this subject by his Honour S. Stevenson Moore, First Deemster, in "Jour. Comp. Leg.," 1902, p. 233, in which the periods of legislative activity are classified and groups of statutes are given, all more or less framed on the model of English Acts of Parliament.

(*c*) Isle of Man Judicature Act, 1883, s. 5.

(*d*) As to this Court, see Att.-Gen. of Isle of Man *v. Cowley* (1858—1859), 12 Moo. P. C. 27.

(*e*) Isle of Man Judicature Act, 1883, s. 4.

(*f*) *Ibid.*, s. 9.

Record (*g*). It consists of three Divisions : (i.) the Chancery Division, (ii.) the Common Law Division—(i.) and (ii.) possessing original jurisdiction analogous to that of the corresponding English Courts (*h*)—and (iii.) the Staff of Government Division, exercising appellate jurisdiction, and also important original jurisdiction (*i*). An appeal lies from the Staff of Government Division to the Privy Council (*k*). Provision is made for trial by jury, both in civil and criminal cases (*l*).

**Summary Jurisdiction.**—Summary criminal jurisdiction is exercised in each of the four districts into which the island is divided—Castletown, Douglas, Peel, and Ramsey—by justices in petty sessions (*m*), or by the High Bailiffs. An appeal lies to the Staff of Government Division where the decision is for a sum above twenty shillings, or is a judgment for more than a month's imprisonment, or for imprisonment without the option of a fine, or for doing anything at a greater expense than forty shillings (*n*). The High Bailiff has also petty debt jurisdiction up to forty shillings (*o*) of British currency (*p*), with an appeal to the Deemster (*q*).

**Licensing Boards.**—By the Licensing Amendment Act, 1895, each of the four districts above referred to has a Licensing Board, consisting of the High Bailiff (stipendiary magistrate), members of the House of Keys representing any constituency wholly or partly within such district, the resident justices, the captain of each parish and the chairman of the Town and Village Commissioners. Once a year the Board meets, and selects six members, who, with the High Bailiff, form the Licensing Court for the district for the year. Each Licensing Court is a Court of Justice, with power to act on its own knowledge of local wants. An appeal lies from its decisions to a Licensing Appeal Court, consisting of (i.) the four High Bailiffs ; (ii.) two members elected annually by the Douglas District Licensing Board ; and (iii.) one member elected by each of the other District Boards. The Licensing Appeal Court also is a Court of Justice

(*g*) Isle of Man Judicature Act, 1883, s. 8.

(*h*) *Ibid.*, ss. 18, 20, 21.

(*i*) *Ibid.* ss. 18, 29, 30.

(*k*) *Ibid.*, s. 34. As to the conditions of appeal, see *infra*, p. 391.

(*l*) Acts of Sept. 9th, 1777, Sept. 12th, 1796, and the amending Jury Act, 1896.

(*m*) See Petty Sessions Act, 1864, s. 1.

(*n*) Petty Sessions Act, 1868, s. 14 ; and see Petty Sessions and Summary Jurisdiction Act, 1900, s. 22.

(*o*) See High Bailiffs Act, 1777, s. 1.

(*p*) Isle of Man Judicature Act, 1883, s. 48.

(*q*) Act of 1777, s. 7.

with full discretionary power to receive further evidence on questions of fact (*r*). Questions of law are excluded from its jurisdiction and are to be brought before the High Court of Justice.

**Ecclesiastical Jurisdiction.**—By the Judicature (Ecclesiastical Transfer) Act, 1884, the jurisdiction in matters matrimonial was transferred to the Chancery Division of the High Court (*s*), and is administered on the principles on which the Ecclesiastical Court acted (*t*).

**THE CHANNEL ISLANDS. Political History.**—Forming part originally of the Duchy of Normandy, which was ceded early in the tenth century by Charles IV. to Rollo the Norman as a fief of the Crown of France, the Channel Islands—Jersey, Guernsey, Alderney, and Sark—descended from Rollo, with the duchy, to William the Conqueror. On the death of William, Robert, his eldest son, took Normandy and the Channel Islands, while William Rufus succeeded to the Crown of England. The Channel Islands and Normandy were re-united to England by Henry I. (*u*). When in the reign of John (*circ.* 1205), the continental part of the duchy was conquered by Philip Augustus (*v*), the sovereign of England retained the Channel Islands. “Theoretically it would follow that whatever was law at the time of the separation is law still, unless it has been abrogated or modified by charter, Order in Privy Council, ordinance of the local Legislature or statute. And, similarly, it is supposed that no law can in theory exist which was not then existing, unless it has been established by one of these four” (*v*).

Under the Interpretation Act, 1889 (*w*), the expression “British Islands” includes, for the purposes of that Act, and of every Act passed after its commencement (January 1st, 1890), the Channel Islands, unless the contrary intention appears.

(*r*) And see the Licensing Amendment Act, 1897, and the Licensing Act, 1904.

(*s*) Judicature (Ecclesiastical Transfer) Act, 1884, s. 49.

(*t*) As to ecclesiastical jurisdiction in the Isle of Man, see *Sodor and Man (Bishop of) v. Derby (Earl of)* (1751), 2 Ves. Sen. 337; *Derby (Earl of) v. Athol (Duke of)* (1748—1749), 1 Ves. Sen. 202; *Cosnahan v. Grice* (1862), 15 Moo. P. C. 216 and n. (*a*).

(*u*) Forsyth's “Cases and Opinions

on Constitutional Law,” p. 391; *Thornton v. Robin* (1837), 1 Moo. P. C. 439.

(*v*) Appendix to First Report of Commissioners appointed to inquire into the state of the criminal law in the Channel Islands, reprinted as App. C., 8 St. Tri. (N. S.) 1127. Free use has been made of this admirable report in what follows. (See also *La Cloche v. La Cloche* (1872), L. B. 4 P. C. 325.)

(*w*) 52 & 53 Vict. c. 63, s. 18 (1).

**Jersey : Sources of the Law of.**—The principal sources of the law of Jersey are, first, the customary law ; secondly, the charters ; thirdly, Orders of the Sovereign in Council ; fourthly, ordinances of the local Legislature ; lastly, certain statutes of the realm. A few words may be said as to each of these in turn.

**The Customary Law : “Le Grand Coustumier,” and Supplemental Treatises and Glosses.**—The principal authority as to the customary law is “Le Grand Coustumier du pays et duché de Normandie.” It contains the ancient law and custom of the Duchy mixed with ordinances (*établissements*) of French monarchs down to St. Louis. A Latin commentary on the Grand Coustumier, composed by Rouillé of Alençon in 1538, is annexed to the edition of the Coustumier of 1539. “There is also annexed a French gloss, some parts of which seem to be of much greater antiquity than Rouillé’s Latin Commentary ; but in its present shape, it appears to be a collection or amalgamation of glosses brought down to the time of the edition of 1539. Other supplemental treatises and documents are added, comprising the Charter of Louis Hutin, called ‘La Chartre aux Normans,’ Ordinances of the Court of Exchequer at Rouen and of French kings down to the time of Francis I., as well as the ‘Stille de proceder en pays de Normandie’ (which seems to be itself a commentary upon an Ordinance of the Parliament of Normandy, dated January 21st, 1515, and which probably was composed about 1539). . . . The whole collection, including texts and comments, is often simply cited under the name Rouillé” (x).

**Terrien’s “Commentaires.”**—In 1574, there was published at Paris, a posthumous work by Terrien, Lieutenant-Bailiff of Dieppe, entitled “Commentaires dv Droict Civil, tant pyblic qve privé, obserué au Pays et Duché de Normandie.” The Jersey Commissioners expressed an adverse opinion on this work in their report (y), on the ground that, “inasmuch as it is, to a very great extent made up of law which has been grafted upon the Norman institutions since the separation,” it is, “therefore, properly of no authority in Jersey.” But in *La Cloche v. La Cloche* (z), the Privy

(x) First Report, *ubi cit. sup.*, at pp. 1127—1129.

(y) *Ibid.*, at p. 1127.

(z) (1870), L. R. 3P. C., at p. 136 ; and

see *Dyson v. Godfray* (1884), 9 A. C. at p. 731. In this case the Judicial Committee also spoke of Basnage’s works, a “book frequently quoted in Jersey as an

Council accorded to it a higher place. "These Commentaries," said Lord Westbury, in giving the judgment of the Board, "were published . . . a considerable time after the final separation of the Duchy of Normandy from the Crown of England, but apparently several years before the formation of 'La Coutume Reformée' of the Duchy. . . . The commentary of Terrien, therefore, may be reasonably regarded as the best evidence of the old custom of Normandy, and also of the Channel Islands before the separation of Normandy from the English Crown."

**La Coutume Reformée.**—"La Coutume Reformée" appears to have been prepared under the authority of Letters Patent granted by Henry III. of France, and dated the 14th of October, 1585 (a). Its character has been thus described by the Privy Council (b): "These collections of Customs are not written laws at all: they are not legislative Acts within the letter of which persons are to be brought. They are written illustrations, written evidences, authoritative declarations of what the unwritten Common Law or custom of the Country was, and unless it can be shown that . . . in the Reformed Custom, some new principle had been introduced by legislative or other sufficient authority in the Duchy of Normandy, subsequent to the separation, the Reformed Custom of the Duchy of Normandy can be looked at as evidence of what the old law was, just as Coke upon Littleton would be looked at as evidence in Maryland or Virginia of what the Common Law of England was, and just in the same way as the decisions of our Courts of Common Law and Equity to this day are admitted as evidence in every Country which has derived its law from England of what the old law was."

**Judicial Precedents.**—"The precedents of the Court are, of course, cited as an authority for the customary law. A fire consumed all the records in 1503. There are a few remaining, as old as 1504: but a nearly regular series commences at 1524. Since 1797 the Criminal Records have been kept apart from the rest" (c).

authority" (as appears from the report of the Commissioners), and of Le Geyt's "Law of Jersey" as "the most authoritative work on Jersey law, published comparatively recently as a compilation of all the law relating to the administration of justice in the island, but written some hundred years ago." See also *Att.-Gen. for Jersey v. Le*

*Moignan* [1892] A. C. at p. 408.

(a) *La Cloche v. La Cloche* (1870), L. R. 3 P. C. at p. 136.

(b) *La Cloche v. La Cloche* (1872), L. R. 4 P. C. at p. 334; and cf. *Att.-Gen. for Jersey v. Solicitor-General of Jersey* [1893] A. C. at pp. 333, 334.

(c) First Report, *ubi cit. sup.* at p. 1129. *Semble*, where a practice, founded on

**Legislation by Order in Council: Controversy as to Registration.**—The power of legislation over Jersey, formerly exercised by the Duke of Normandy, has for centuries been exercised by Order in Council. Such Orders in Council are registered by the Royal Court, and are not binding until registration has taken place. They contain a specific command that they shall be registered: but where an Order appears to be contrary to the charters and privileges of the island, or burdensome ('onéreux'), the Royal Court may suspend registration till the pleasure of the Crown be further taken. Whether, if the Crown insist on any Order, the Royal Court can still refuse registration, or prevent the Order from taking effect without it, is a moot question. On the one hand, the Jersey Commissioners state (e) broadly that if the Crown does not withdraw the Order, it must be registered. On the other hand, the Privy Council, in the case of *The States of Jersey* (f), in 1853, directed certain Orders in Council, intended to give effect to recommendations by the Jersey Commissioners themselves, and objected to by the Royal Court, to be revoked, "as serious doubts existed as to whether the establishment of such provisions without the assent of the States was consistent with the constitutional rights of the Island": and in later cases (g), which have raised the same question, no definite decision on the point has been given.

**Legislation by the States.**—The next source of law in Jersey consists of the legislation of the States, which are presided over by the Bailiff, and are composed of the rector and constable of each parish and fourteen elected deputies. The States possess, within certain

the old Norman law, though erroneous in its origin, has for a long series of years prevailed in Jersey, the Judicial Committee will not disturb it (*Janvrin v. De la Mare* (1861), 14 Moo. P. C. at p. 345).

(e) First Report, *ubi cit. sup.* pp. 1130, 1131.

(f) (1853), 9 Moo. P. C. 185; S. C. 8 St. Tri. (N. S.) 285. An admirable bibliography relating to the institutions of Jersey will be found in the latter report of this case at p. 311, n. (a); and see First Report, *ubi cit. sup.* App. B., p. 1097.

(g) In *re Daniel* (1891), unreported

(but see 8 St. Tri. (N. S.) at p. 314, n. (a)), the States of Jersey having petitioned against the execution of a Royal Warrant of pardon on the ground that legislation by Order in Council was unconstitutional without their previous consent, the Committee reported that the Royal prerogative of mercy was not within the Order of 1679 (May 21st), "giving, as their Lordships desire to do, to the Orders in Council relating to the island the widest interpretation in favour of the privileges claimed by the inhabitants of Jersey which the language will reasonably bear."

limits, the power to pass "Règlements" (*h*) for three years. Such Règlements are subject to the veto of the Lieut.-Governor (*i*) and to the dissent of the Bailiff; either of which prevents the Règlement to which it is affixed from having force of law, until the question at issue has been decided by the Sovereign in Council. The Royal assent is thus indirectly given if neither of the representatives of the Crown having power to do so affix their veto.

**Code of 1771.**—Another source of written law in Jersey is the Code of 1771, which received the Royal assent in Council. The Order in Council confirming it declared "that all other political and written laws heretofore made in the said island, and not included in the said Code, and not having had the Royal assent and confirmation, shall be from henceforward of no force and validity." The scope of the Code is, however, much more limited, and perhaps the most important change that it effected was to put a stop to the power previously enjoyed by the Royal Court of passing ordinances without the assent of the States.

**Acts of Parliament.**—Acts of Parliament, mentioning the island, have the force of law without registration, but such Acts are registered by the States under an Order in Council. Apparently it is sufficient if an enactment extends to the island by necessary implication. "In many instances, where it is thought that an Act of Parliament, though not so framed as to extend to the island, might be applicable there with advantage, the States pass an ordinance to the same effect, *mutatis mutandis*," which is transmitted for the approbation of the Sovereign in Council (*k*).

**Coutume d'Orleans: Coutume de Paris.**—The Coutume d'Orleans and the Coutume de Paris, although they have not the force of law in Jersey, may legitimately be referred to for the purpose of testing the interpretation put on a custom of the island, and also for the purpose of explaining the force and effect of particular expressions (*l*).

(*h*) Every Act, including the preamble as well as the enacting part of the Act, of the States must be lodged "au greffe" for fourteen days before it is determined for debate and consideration (Order in Council of March 28th, 1771; and see *In re States of Jersey* (1858), 11 Moo. P. C. 320.

(*i*) Under the Order in Council, July 19th, 1619, the Lieutenant-

Governor has a negative voice as regards ordinances which he may deem contrary to the interests of the Crown, or which affect the Royal prerogative. And see *In re States of Jersey* (1862), 15 Moo. P. C. 195.

(*k*) See also note (*g*), p. 135.

(*l*) *La Cloche v. La Cloche* (1870), L. R. 3 P. C. at p. 138; *Falle v. Godfray* (1888), 14 A. C. at p. 76.

**Courts of Law: The Royal Court.**—In Jersey, the Royal Court consists of the Bailiff, who is a lawyer, and twelve jurats, not necessarily lawyers, elected for life by the ratepayers of the island. The Bailiff, although he presides in the Royal Court, has no decisive voice there, except between opinions supported by an equal number of jurats, to one of which he must ultimately give the preponderance, even although he dissents from both. The Bailiff states for the information of the jurats his opinion as to what the law is, but cannot insist on its acceptance by the jurats. The presence of one of the law officers (Procureur-General and Avocat du Roi) or a member of the Bar (*m*) to act for them is essential to the constitution of the Court, which never exercises those powers of censure essential for the maintenance of order except on the conclusions of the Crown officer. The Court sits either as a Court of first instance, when it consists of the Bailiff (*n*) and two jurats—the “nombre inférieur”; or as a Court of Appeal, consisting of the Bailiff and at least seven jurats—the “nombre supérieur.” An appeal lies from it to the Privy Council, where, in actions as to realty, the value of such realty is five “livres tournois” (*o*) a year (*p*) and in personal actions, the amount in dispute is upwards of £200 sterling (*q*). The Privy Council may also grant special leave on petition (*r*), in cases not coming within the Orders in Council (*p*) (*q*).

(*m*) The number of advocates entitled to practise at the bar of the Royal Court was, by legal custom, limited to six, the right of nomination being vested in the Bailiff *virtute officii* (D'Allain *v. Le Breton* (1857), 11 Moo. P. C. 64; and cf. *Le Gallais v. De Veulle* (1833), *ibid.* at p. 73, n. (*a*)). The bar was, however, thrown open by an Act passed by the States on July 7th, 1859 (Jersey Bar, *In re The*, (1859), 13 Moo. P. C. 263.

(*n*) Great weight is to be ascribed to the Bailiff's view of the law and customs of the island (*La Cloche v. La Cloche* (1870), L. R. 3 P. C. at p. 135.

(*o*) The value of the “livre tournois” depended on the current price of grain. In 1811 the exchange was 24 livres to the £1: *Dodd's case* (1858), 2 De G. & J. at p. 527.

(*p*) Order in Council of May 19th, 1671, art. 13 (Stat. R. & O. Rev., 1904, vol. vi., “Judicial Committee,” p. 46).

(*q*) Order in Council of April 26th, 1862, confirming States Act of March 7th, 1862, set out in Safford and Wheeler's “Privy Council Practice,” p. 236.

(*r*) As to “Doléances,” see Jersey Civil and Eccles. Commiss. Report, 1860, p. liv. As to the criminal jurisdiction of the Royal Court, see the First Report on the State of the Criminal Law in the Channel Islands, 1847—48, pp. 33 *et seq.* As to special leave to appeal in criminal cases, see *Esnouf v. Att.-Gen. for Jersey* (1883), 8 A. C. 304; 48 L. T. 321. As to the position of the Royal Court as a legislative body, see *In re States of Jersey* (1853), 8 St. Tri. (N. S.) 285; *Le Quesne*, “Const.



**Other Courts.**—A Petty Debt Court, held before the official who acts as police magistrate in the “Court for the repression of minor offences” nominated by the States, exercises civil jurisdiction up to £10 sterling (*s*). There are also certain Seigniorial Courts in the island (*t*).

**Ecclesiastical Jurisdiction.**—The Ecclesiastical Court, established by the Canons of 1623, and confirmed by Royal Charter, consists of the Dean of Jersey, or his commissary, and certain assessors chosen from among the beneficed clergy (*u*). An appeal lies to the Bishop of Winchester in person, or, *sede vacante*, to the Archbishop of Canterbury (*v*). Although Jersey is in the diocese of Winchester, it is not (*x*) within the operation of the Divorce Act, 1857 (*y*).

**Guernsey: Sources of the Law of.**—The law of Guernsey, like that of Jersey, is derived (*z*), first, from the customary law; secondly, from the charters; thirdly, from Orders in Council; fourthly, from ordinances of the local Legislature; lastly, from certain statutes of the realm.

**The “Grand Coustumier.”**—“The customary law, however, seems never to have been precisely the same in the two islands, the Grand Coustumier de Normandie having never been received as law in Guernsey to the extent to which it prevailed in Jersey. The former island, probably, was at all times governed by a local custom, differing, as was frequently the case in Normandy, in some particulars from the general custom of the Duchy” (*a*).

**Precepte d’Assize.**—The special customary law of Guernsey is embodied in various documents. The first that has to be noticed is the Précepte d’Assize. The following explanation of the origin of this instrument was offered to the Channel Islands Commissioners of 1846 by Colonel De Havilland, one of the jurats of the Royal Court:—“Prior to and at the beginning of the reign of Edward III., Commissioners were almost periodically sent to the island about every three years, and . . . from their not knowing the customs and usages

Hist. of Jersey”; and Jersey Civil and Eccles. Comm. Rep., 1860—61, pp. 32 *et seq.*

(*s*) Jersey Civ. and Ecc. Comm. Rep., p. 40.

(*t*) *Ibid.* p. 41.

(*u*) Phillimore, “Ecclesiastical Law,” ii. 927 (*j*).

(*v*) Jersey (Dean of) *v.* Rector of

— (1840), 3 Moo. P. C. 229.

(*x*) *Le Sueur v. Le Sueur* (1876), 1 P. D., per Sir R. Phillimore, at p. 140.

(*y*) 20 & 21 Vict. c. 85.

(*z*) Report of Commissioners, 1846, 8 St. Tri. (N. S.), pp. 1174 *et seq.*

(*a*) *La Coutume Réformée*, *supra*, p. 134.

of the island, their decisions were almost always at fault, and great numbers of complaints were made, which were at last gathered together; and Sir Henry Spigurnell, and the individuals named in the *Précepte d'Assize*, were sent, in the seventeenth year of Edward III., to examine into those decisions. They declared the decisions to be of none effect, and that the inhabitants of the island continued in the enjoyment of their liberties and privileges as fully as before those processes and decisions had taken place. But, as their judgment did not declare what those liberties were, but only that the inhabitants possessed the right of enjoying them, annulling the old proceedings which had been in opposition to them, the Court had them laid down and approved by Sir Henry Spigurnell and his associates, and afterwards by the different justices in Eyre named in the *Précepte d'Assize*." This view did not commend itself to the Channel Islands Commissioners. They came to the conclusion that "the *Précepte d'Assize* was framed by the Royal Court, and is valuable as evidence of what the inhabitants, at an early time, claimed to be their customs and privileges," but that "it derives no force from the approval of the justices in Eyre in the manner stated in the instrument. . . . An attentive comparison of the documents shows that the liberties granted by the Constitutions are greatly expanded in the construction put upon them by the Royal Court."

The "**Extente of the King.**"—In the *Précepte d'Assize*, reference is made to another document, the "*Extente of the King*," which is probably an inquisition taken in obedience to certain writs, directing an inquiry, *inter alia*, into the question of the privileges claimed by the inhabitants.

The "**Approbation des Loix.**"—The great authority, however, for the law, both civil and criminal, of Guernsey, is the "*Approbation des Loix, Coustume et Usages de l'Isle de Guernezey, différentes du Coustumier de Normandie d'ancienneté observés en ladite Isle.*" "It professes in the introductory chapter to be a digest and arrangement of these laws, customs and usages, made May 22nd, in the 24th of Elizabeth, by Sir Thomas Leighton, Knight, the then Governor of the Island, Thomas Wigmore, the Bailiff, the jurats of the Royal Court, and the acting Procureur of Her Majesty, in obedience to two Orders in Council made, the one at Richmond, on October 9th, 1580, the other at Greenwich, on July 30th, 1581. It was ratified and approved of by Her Majesty in Council on

October 27th, 1581, in the 25th year of her reign" (b). The work is, however, nothing more than a series of remarks on each chapter of Terrien (c) stating wherein the custom of Guernsey differs from, and wherein it accords with, the law laid down in the particular chapter of Terrien, "often simply using the expression *nous usons de ce chapitre*."

**Proceedings of the Court.**—"Besides the written law found in Terrien and the Approbation . . . records of the proceedings of the Court are preserved at the office of the Greffe, which have the force of precedents in doubtful cases. No digest, however, of the decisions, nor index to the cases exists: but the advocates keep collections of cases which are cited as authorities for the guidance of the Court" (d).

**French Jurists: Le Marchant, Carey.**—"The criminal procedure in Terrien being very similar to that in force in France before the first Revolution, the older French criminal jurists, more particularly Pothier, Jousse, and De la Combe, come to be considered as authority." In addition to these sources of law, may be mentioned a work, frequently referred to in discussions on Terrien and the "Approbation des Loix": "*Remarques et Animadversions sur l'Approbation des Lois et Coustumier de Normandie usitées es Jurisdictions de Guernezé et particulièrement en la Cour Royale de la ditte Isle*." Its author, Mr. Thomas Le Marchant, was a Presbyterian minister, who lived in the middle of the seventeenth century. This book was afterwards published by Order of the Royal Court, with a preface in which it was explained that the Court neither confirmed nor approved all the opinions expressed by the writer, and that the sole object of the publication was to furnish the inhabitants with an opportunity of instructing themselves in the origin and history of their customary law. There may also be mentioned "*Essai sur les Us, Coutumes et Privilèges de L'Isle de Guernesey, par Laurent Carey, Jure Justicier (1765—1769)*;" also published by Order of the Royal Court.

**Orders in Council: States of Guernsey.**—As regards Guernsey, there is no controversy that Orders in Council, while, as in Jersey, they require registration, derive no additional force from such

(b) Report of Commissioners, 1846,  
8 St. Tri. (N. S.), p. 1178.

(d) Report, *ubi cit. sup.* 8 St. Tri.  
(N. S.) p. 1182.

(c) As to Terrien, see *ante*, p. 133.

registration: nor has the Court any such suspensive power as exists in Jersey. The legislative functions of the States of Guernsey are very limited. "The initiative belongs to the Royal Court, where the projected law must be first discussed and adopted before it can be submitted to the States. If it be passed by the States, it is transmitted to the Privy Council for confirmation: if it is rejected, the measure falls to the ground."

**Courts of Law: Royal Court.**—The Royal Court of Guernsey sits either as a Court of first instance (when it consists of the Bailiff and not less than two of the twelve jurats), or as a Court of Appeal (consisting of the Bailiff and the twelve jurats). The Bailiff exercises presidential functions, and collects the votes of the jurats, giving a casting vote where they are equally divided (*f*). The Royal Court exercises jurisdiction over all offences committed within the bailiwick, except (1) treason, (2) coining, and (3) laying violent hands on the Bailiff or on any jurat while he is in the exercise of his office. The cognisance of these three offences is said to belong to the Court, and the punishment of them only is reserved to the Crown. The "Procureur du Roi" and "Contrôle du Roi" (*g*) correspond roughly to the Attorney and Solicitor-General in England, but form a constituent part of the Court when sitting as a criminal tribunal. No sentence can be passed till their "conclusions" have been given, *i.e.*, their opinion on the law applicable to the case, and their view as to the effect of the facts proved, and the punishment that the crime demands. An appeal lies to the Royal Court from the Court of Alderney and the Court

(*f*) See Carey, "Institutions de Guernesey," pp. 29—38. As to the relations between the Lieutenant-Governor and the Bailiff and jurats, see *In re Bailiff, &c., of Guernsey* (1844), 5 Moo. P. C. 59; S. C. 6 St. Tri. (N. S.) 159. It was held in this case that a Royal writ of pardon need not be verified and registered in the Royal Court of Guernsey before being executed. See *In re Daniel* (1891), *supra*, p. 135, note (*g*).

(*g*) As to the origin, history, and relative powers and duties attached to these offices, see *In re States of Guernsey* (1861), 14 Moo. P. C. 368. The office

of "Contrôle" was, upon a vacancy occurring in it in 1851, amalgamated, by an arrangement made by Sir George Grey, then Home Secretary, and the Procureur de la Reine, but without the cognisance of the States of the Island, with the office of Procureur de la Reine. But, upon a petition by the States to the Crown, complaining of that amalgamation, and the suspension of the office of "Contrôle," as unconstitutional and interfering with the due administration of justice and the legislature of the island, the office was by Order in Council of July 25th, 1861, directed to be revived (S. C.).

of Sark, and from the Royal Court to the Privy Council, under an Order in Council of May 13th, 1823, where the amount in dispute, if realty, is of the value of £10, and, if personalty, is of the value of £200 (*h*). The Royal Court is also a legislative body (*i*). The States of Deliberation as at present constituted under an Order in Council of the 8th August, 1899, consist of the Bailiff, the twelve jurats, the ten rectors, the two law officers of the Crown, fifteen delegates nominated by the Douzaines or Parish Councils, and nine Deputies elected by the ratepayers throughout the Island.

**Ecclesiastical Jurisdiction.**—The Ecclesiastical Court consists of the Dean or his deputy and the rectors of the ten ancient parishes as assessors, with an appeal to the Bishop of Winchester, or, *sede vacante*, to the Archbishop of Canterbury. The Canons of 1603 were accepted in the islands of Guernsey, Alderney, and Sark (*k*) upon the re-establishment of the Dean's Court in 1662.

**Alderney: Court of Alderney.**—The Court of Alderney, consisting of a President, called the Judge, six jurats, and, as in Jersey, a "Procureur du Roi" and "Controle du Roi" has criminal jurisdiction, limited to preliminary investigation into the fact of a crime having been committed, the offender being then referred to the Royal Court of Guernsey, unless he submits to the jurisdiction. An appeal lies to the Royal Court of Guernsey.

**Sark: Royal Court of Sark.**—The Royal Court of Sark, held under the Seneschal (*l*), has criminal jurisdiction up to "fines of three 'livres tonendis,' or imprisonment to the extent of three times twenty-four hours" (*m*).

**Herm and Jethou.**—The islands of Herm and Jethou are, for judicial purposes, parts of Guernsey (*n*). Neither has any Courts or Constitution of its own, although Herm once made an unsuccessful attempt to assert its independence (*o*).

(*h*) Stat. R. & O. Rev., 1904, vol. vi., "Judicial Committee," p. 30; also Order in Council of July 15th, 1835 (*ib.* p. 33).

(*i*) On this subject, see Second Report on the State of the Criminal Law in the Channel Islands—Guernsey, pp. 11 *et seq.* See further on the whole subject, Carey, *ubi cit. sup.*; Anson, "Const. Law," Pt. ii., p. 262; Berry, "Hist.

of Guernsey."

(*k*) See Duncan's "History of Guernsey."

(*l*) See Godfray v. Constables of the Island of Sark, [1902] A. C. 534, at p. 537.

(*m*) Second Report, &c., p. 44.

(*n*) Second Report, Answer, 4874.

(*o*) Martyn v. McCulloch (1837), 1 Moo. P. C. 308.

## CHAPTER II.

### MEDITERRANEAN POSSESSIONS.

WE pass now to a group of possessions, united to England by ties of a somewhat different character, in the Mediterranean Sea—Gibraltar, Malta, and Cyprus.

**GIBRALTAR: Political History** (a).—The town and fortress of Gibraltar capitulated to Admiral Rooke in 1704, were ceded to Great Britain for ever by Art. X. of the Treaty of Utrecht, and have been held by her ever since their first acquisition, in spite of sieges in 1705 and 1727, and the famous siege lasting from 1779 to 1783, when General Eliott (afterwards Lord Heathfield) held Gibraltar for three years and seven months against a combined French and Spanish force. It appears that, on the conquest of Gibraltar, the old inhabitants almost universally abandoned the place, and for some years nothing in the shape of civil government existed; landed property was held on a kind of sufferance, or at the will of the Government (b). A petition by the inhabitants to the Crown in 1722 to establish a civil judicature in Gibraltar states that the Spanish, French, Genoese and Dutch residents had each, at that time, a consul and a lawyer, who decided all differences between them (c).

**Law in Force.**—But although “the peculiar situation and character of Gibraltar and the circumstances consequent upon its capture render it difficult to ascertain how or when the alteration of its laws first took place . . . by some means, the law of England” was substituted in Gibraltar for the law of Spain (d). The gradual extension of English law to this possession by successive charters

(a) See Lucas, “Hist. Geog. of the Brit. Cols.,” i., p. 9.

(b) See appellants’ case in *Jephson v. Riera* (1853), 3 Knapp, 133; 3 St. Tri. (N. S.) 594, in which it was held that the English law of dower had been introduced in Gibraltar (*Benatar v.*

Smith (1812), 3 Knapp, 143, n.; and see Chalmers’ “Opinions of Eminent Lawyers,” i., 169; Clark’s “Colonial Law,” 673.

(c) Clark, *ubi cit. sup.* at p. 675.

(d) *Jephson v. Riera*, *ubi cit. sup.*, at p. 150.

has been traced by Mr. Justice Fawkes, Puisne Judge of the Orange River Colony, and formerly Attorney-General of Gibraltar, in a valuable communication to the "Journal of Comparative Legislation" (e), from which a few quotations may be made.

"The first Charter of Justice applied only to personal property. The second Charter of Justice, 1739, extends jurisdiction and provides that the laws of England shall be the measure of justice between the parties. The third Charter of Justice, 1752, extends jurisdiction to criminal cases and real property. The fourth Charter of Justice, 1817, revokes former charters, establishes a Court of Judicature, and provides for the administration, 'as far as may be,' of the law of England. The fifth Charter of Justice, 1830, revokes former charters, establishes a Supreme Court, a Chief Justice, officers of the Court, provides for admission of practitioners, and for trial by the Chief Justice and a jury in criminal cases, and exempts members of the garrison from criminal jurisdiction unless with the consent of the Governor. It further establishes a small debt Court with jurisdiction limited to £40, and inferior criminal Courts, and provides for appeals to the Privy Council. The sixth Charter of Ecclesiastical Jurisdiction, 1832, relates to probate of wills and letters of administration. These charters were revoked by the Supreme Court Consolidation Order, Gibraltar, 1888 (f), under which the present Supreme Court is constituted."

By an Order in Council of February 2nd, 1884, the law of England, as it existed on December 31st, 1883, is brought into force in Gibraltar, so far as it is applicable to the circumstances of that possession, in matters not provided for by local enactment (g).

The common law of England is in force in Gibraltar. The laws of Gibraltar were revised and consolidated in 1890, and several Imperial statutes, codifying branches of English law, *e.g.*, the Factors Act, 1889 (h), the Arbitration Act, 1889 (i), the Partnership Act, 1890 (k), the Trustee Act, 1893 (l), and the Sale of Goods Act, 1893 (m), have been adapted to it by local enactment. In 1888 an opinion was given (n) by Sir John Campbell and Sir R. M.

(e) "Jour. Comp. Leg.," 1897, at p. 144.

(f) Stat. R. & O. Rev., 1904, vi., Gibraltar, p. 10.

(g) *Ibid.* p. 6.

(h) 52 & 53 Vict. c. 45.

(i) *Ibid.* c. 49.

(k) 53 & 54 Vict. c. 39.

(l) 56 & 57 Vict. c. 53.

(m) *Ibid.* c. 71.

(n) Forsyth's "Cases and Opinions," pp. 224, 225.

Rolfe, then Attorney and Solicitor General respectively, that, even under the strictest interpretation of the Treaty of Utrecht, the territory between the gates of the garrison and the extremity of the English lines is to be considered as part of the fortress of Gibraltar, and is included in the charters establishing Courts with jurisdiction over the garrison and territory. The *status quo* as to Gibraltar is carefully preserved in the Anglo-French Convention of 1904 (*e*).

**Courts of Law: Supreme Court.**—The Supreme Court of Gibraltar consists of a Chief Justice (*f*), who exercises the civil, including the divorce and matrimonial (*g*), jurisdiction of the High Court of Justice in England, but not such jurisdiction as, prior to the Judicature Act, 1873 (*h*), was vested in the High Court of Admiralty. The Supreme Court has jurisdiction in infancy and lunacy (*i*), and has also power to review the proceedings of inferior Courts, but not those of Courts-martial held at Gibraltar (*k*). Issues of fact were till 1902 tried by the Chief Justice and three assessors (*l*), who were summoned and empannelled like jurors in England (*m*), and the verdict depended on the majority of the votes; but, if the Court were equally divided, the opinion of the Chief Justice prevailed (*n*). A jury might be had if the plaintiff and the defendant desired one (*o*)

(*e*) See the reservation in art. 2, and the Marquess of Lansdowne's explanatory despatch, April 8th, 1904: France, No. 1, 1904 (Cd. 1952), p. 5.

(*f*) Order in Council of November 17th, 1888 (see Gibraltar Laws, 1890, pp. 503 *et seq.*, and Stat. R. & O. Rev., 1904, vi., Gibraltar, s. 4).

(*g*) Sect. 23.

(*h*) 36 & 37 Vict. c. 66. Prior to the fusion of law and equity in England, it was held that, although the Supreme Court of Gibraltar may be bound, in administering law, to follow the principles which govern English Courts of law, and in administering equity to follow the principles which govern English Courts of equity, there was nothing in its constitution, or in the rules which governed it, to relegate a party who had mistaken his remedy and had sought equitable relief in a matter not properly within the cognisance of an English Court of equity

to another tribunal, or to send him from one side of the Court to another (*Larios v. Bonany Y Gurety* (1873), L. R. 5 P. C. at p. 356). In this case, the Judicial Committee added: "It seems rather to be a Court that already possesses the power which modern legislation is seeking to attribute to our own Superior Courts, of administering both law and equity to the fullest extent in any cause of which it may be seised." This result, it is scarcely necessary to observe, was attained in England by the Judicature Act, 1873, s. 24.

(*i*) Order in Council, 1888, s. 49.

(*k*) *Ibid.*, s. 24.

(*l*) *Ibid.*, s. 25.

(*m*) *Ibid.*, ss. 28—31.

(*n*) *Ibid.*, s. 25.

(*o*) *Ibid.*, s. 32. See also Jury Ordinance, 1888 (No. 7 of 1888, and amending Ord. No. 4 of 1889).



But now this system is done away with: either party is entitled to a jury in actions of slander, libel, false imprisonment, malicious prosecution, seduction or breach of promise of marriage. Chancery causes or matters are tried by the Chief Justice without a jury, unless the Court otherwise order: the Court may direct the trial, without a jury, of issues requiring a prolonged examination of accounts or scientific or local investigation: a jury may be demanded by either party after notice of trial in other cases (*p*). Criminal trials take place before the Chief Justice and a jury of twelve, and the verdict must be unanimous (*q*). Sentences of death require confirmation by the Governor (*r*). The leave of the Governor is also necessary before any member of the garrison can be arrested in a civil suit (*s*), or criminal proceeding (*t*). An appeal lies to the Privy Council from judgments of the Supreme Court for sums above, or involving claims to civil rights amounting to, £300 (*u*). The Supreme Court also exercises a summary jurisdiction (*x*) in personal suits for more than £5, and not more than £20, excluding proceedings of the type excluded from the jurisdiction of county courts in England (*y*). The plaintiff or the defendant may require a jury in such cases (*z*).

**Exterritorial Jurisdiction.**—An appeal lies to the Supreme Court of Gibraltar from the Court of Morocco (*a*), where the amount involved is equal to, or more than, £50 (*b*). The Supreme Court has in all civil matters within the jurisdiction of that Court, except as between British subjects and British protected persons, on the one hand, and Moorish subjects, on the other, and in all criminal matters in which the defendant is a British subject or British protected person, original concurrent jurisdiction with the Court of Morocco (*c*), but not so as to interfere with the due exercise of its jurisdiction by that Court, nor in criminal matters except at

(*p*) Ord. No. 4 of 1902.

(*q*) Order in Council, 1888.

(*r*) *Ibid.*, s. 39.

(*s*) *Ibid.*, s. 33.

(*t*) *Ibid.*, s. 40.

(*u*) *Ibid.*, s. 41. See also Schedule to Ordinance 6 of 1898 which substitutes £300 for 7,500 pesetas.

(*x*) *Ibid.*, s. 57.

(*y*) *Ibid.*, ss. 63—65. Ord. 6 of 1898,

Sched.

(*z*) *Ibid.*, s. 66.

(*a*) Morocco Order in Council of November 28th, 1899 (Stat. R. & O. Rev. 1904, v., "Foreign Jurisdiction," p. 425); and see *infra*, pp. 329, 330.

(*b*) *Ibid.*, s. 92.

(*c*) *Ibid.*, s. 11 (1).

the request and with the consent of the Consul-General or the Secretary of State (*d*).

An English Court before which a person accused of having committed an offence in Morocco is brought for the purpose of committal under the Fugitive Offenders Act, 1881 (*e*), has the power to order him to be returned for trial in Gibraltar, and will exercise this power if it appears desirable that he should be tried there (*f*); and in such cases the defendant is entitled to be tried by jury (*g*).

**Police Magistrate.**—The police magistrate of Gibraltar has civil jurisdiction up to £5 (*h*), with an appeal to the Supreme Court (*i*), and criminal jurisdiction as defined by Ordinance No. 2 of 1890 (*k*), which makes provision for preliminary inquiries, and the exercise of summary jurisdiction, by justices of the peace.

**MALTA : Political History.**—The island of Malta, after being ruled successively by the Romans and the Saracens, was taken by Roger King of Sicily, and remained attached to the Sicilian kingdom till 1530, when Charles V. granted it to the Knights of St. John, after their expulsion from Rhodes. The Grand Master of the Order thereupon became "Imperator" in the fullest sense of the term (*l*), and the liberties of the Maltese were gradually suppressed. In 1798, when the Knights of St. John were dispersed by Napoleon, the French took possession of the island. It was captured by the British in 1800, and by the Treaty of Paris, May 30th, 1814, it was permanently annexed to the British Crown (*m*). A Charter of Justice was granted, dated December 28th, 1824; trial by jury was introduced in 1829 (*n*).

**Law in Force.**—The law now in force in the island is based on the Roman law as modified by local legislation and usage; on

(*d*) Order in Council, 1888, s. 11(2).

(*e*) 44 & 45 Vict. c. 69.

(*f*) Reg. v. Spilsbury (1898), 79 L. T. 211.

(*g*) Spilsbury v. Reg., [1899] A. C. 392. The defendant in this case was tried by the Chief Justice and a jury and acquitted.

(*h*) Ordinance No. 1 of 1881, ss. 1, 2. See Ord. 6 of 1898, Sched., substituting £5 for 125 pesetas.

(*i*) *Ibid.*, s. 37.

(*k*) See also amending Ordinance,

No. 1 of 1900.

(*l*) Gera v. Ciantar (1887), 12 A. C. at p. 566; and see Lucas, "Hist. Geog.," i., 24.

(*m*) It is contended that the Maltese voluntarily placed themselves under the protection of the British Crown. See First Report on the Law and Administration of Malta by Sir John Stoddart, Chief Justice, 1836.

(*n*) Proc. No. 6, October 15th, 1829; and cf. Proc. No. 7, April 26th, 1832.

the Code Rohan, published in 1784 by the authority of Grand Master Rohan, and on the more modern codes and ordinances (o). Ordinances Nos. 7 of 1868 and 1 of 1878 are a reproduction, with modifications, of large portions of the Italian Civil Code (oo).

**Courts of Law: Superior Courts.**—The Superior Courts (p) exercising general civil jurisdiction through Malta and its dependencies consist of the following tribunals:—(I.) The Civil Court, divided into two Halls—the First Hall, having two Judges who sit alternatively, in which contentious cases are heard, with an appeal to the Appeal Court; and the Second Hall, under a single Judge, with voluntary jurisdiction in matters of a civil nature: no appeal lies from the decisions of this Court, but a demand for redress can be made in the First Hall of the Civil Court. (II.) A Commercial Court, with cognisance of commercial cases. (III.) A Court of Appeal, consisting of the Chief Justice as President, and two Judges. The Appeal Court hears, in addition to those above mentioned, appeals from the magistrates of Malta and Gozo. An appeal lies to the Privy Council from judgments for sums above £1,000 (q).

**Inferior Courts.**—There are also, in Malta, inferior Courts, exercising jurisdiction, limited to particular districts, and consisting of the following tribunals: (I.) Magistrates of Judicial Police for Malta, with civil jurisdiction up to £5, except as regards real property; and commercial causes, not being claims for goods sold, disputes between masters and seamen, and as to hire of boats; and criminal jurisdiction up to a limit of three months' imprisonment with or without hard labour. In cases beyond that limit, the Court considers whether the accused should be committed for trial before His Majesty's Criminal Court (r), consisting of one judge, or, when punishment of

(o) *Gera v. Ciantar*, *ubi cit. sup.* at p. 557. "Encyclo. Laws of Eng.," tit. "Malta."

(oo) There is a French translation of these ordinances by M. Clément Billiet, President of the Tribunal of First Instance at Philippeville, Algiers. A guide in English to the laws and regulations of Malta was published in 1872.

(p) See Code of Civil Procedure, promulgated originally in 1855, and amended by the following Ordinances:

—Nos. 5, 7, 10 of 1856; 12 of 1857; 11 of 1858; 11 of 1859; 14 of 1862; 3 of 1863; 5 of 1864; 14 of 1865; 4 of 1868; 9 of 1871; 7 of 1876; 1, 6, and 7 of 1880; 5 of 1885; 9 of 1886 (reprinted in 1887); 15 of 1900; 8 of 1901; 2 of 1903; 4 of 1905.

(q) Order in Council of December 18th, 1824 (Stat. R. & O. Rev., 1904, vol. vi., "Judicial Committee," p. 52); and cf. Order in Council of June 26th, 1873.

(r) The Maltese Penal Code has been

death is demanded, and in cases of offences punishable with hard labour or imprisonment for a period exceeding twelve years (*s*), or on points of law, three Judges. There are also (II.) two Magistrates at Gozo (*t*), who exercise the same superior jurisdiction except in commercial cases as the superior Courts of Malta (*u*).

**CYPRUS: Political History.**—The island of Cyprus, formerly governed by lieutenants of the Byzantine Emperors, was occupied by Richard I. of England in 1191, and was bestowed by him on the Knights Templar, who afterwards sold it to Guy de Lusignan—"a rich compensation for the loss of Jerusalem" (*x*). In 1489 it passed under the dominion of the Venetian Republic. In 1571 it came under the power of Turkey. The administration of the island was taken over by England under the Treaty of June 4th, 1878 (*y*).

**Law in Force.**—The law in force in Cyprus is (I.) in Ottoman actions or in the prosecution of Ottoman subjects, the Common Law of the Ottoman Empire as altered or modified from time to time by Cyprus statute law; (II.) in foreign actions, or in the prosecution of persons not Ottoman subjects, English law in force on December 21st, 1878, as altered and modified from time to time by Cyprus statute law (*z*); unless, in civil actions, where the parties have expressly or by implication consented to variation from these rules, or where the Ottoman law remaining in force, binds every person, whether of Ottoman nationality or not; and Ottoman

amended by the following enactments: Ordinance No. 4 of 1856; No. 6 and 9 of 1857; No. 10 of 1858; No. 9 of 1859; No. 5 of 1868; No. 6 of 1871; No. 4 of 1874; No. 3 of 1877; No. 1 of 1879; Nos. 3 and 7 of 1880; No. 4 of 1882; No. 3 of 1885; No. 2 of 1886; Nos. 4, 9 and 16 of 1888; No. 14 of 1889; No. 2 of 1892; No. 8 of 1893; No. 4 of 1894; No. 3 and No. 10 of 1896; No. 4 of 1897; the Malta Order in Council 1899; Ordinances Nos. 3, 6, 1, and 13 of 1899; Nos. 11, 12 and 16 of 1900; No. 16 of 1901; No. 1 of 1903; Nos. 1, 4 and 12 of 1904; and Ord. No. 11 of 1905. The Code was re-edited in 1901. All the amendments made by the enact-

ments above referred to prior to 1901 are embodied in the new edition.

(*s*) Art. 429 of present edition of the Penal Code.

(*t*) See art. 66 and 68 of the Code of Civil Procedure.

(*u*) Kindly revised by Dr. Victor Azopardi, Crown Advocate.

(*x*) Gibbon, "Decline and Fall," vi., p. 375; and see "Encyclo. Laws of Eng.," tit. "Cyprus."

(*y*) See also Lucas, "Hist. Geog. Brit. Colonies," i. 57.

(*z*) Cyprus Courts of Justice Orders, 1882, as amended in 1902 (Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 347), ss. 23, 24.

law as altered by Cyprus statute law applies in all actions relating to immovable property (a). "Ottoman law" here means the law which was in force in Cyprus at the date of the English occupation. It is based upon the Sheri or Muhammadan Sacred Law (b). By the "Hatti Humaïoun" of 1856 (c), and the Cyprus Law of 1884 (since repealed by No. 16 of 1894), succession was regulated by creed, and, accordingly, it was held, in one case, by the Privy Council, that by the law of Cyprus the legitimacy of a Roman Catholic Ottoman subject is to be determined by the Roman canon law (d). The Wills and Succession Law, 1895, established definite rules of succession for the classes of persons with whom it deals (e).

(a) Cyprus Courts of Justice Orders, s. 25.

(b) The principles of the Muhammadan Common Law, as recognised in the Ottoman Empire, are collected in the Mejlé, or Civil Code, compiled by a committee of Turkish jurists in 1869. The Mejlé follows, in most respects, the Hanifite tradition. The Muhammadan Law was introduced on the conquest of the island by the Turks in 1571.

(c) As to which, see Parapano v. Happaz, *infra*, n. (d).

(d) Parapano v. Happaz, [1894] A. C. 165.

(e) The law of testamentary and intestate succession is consolidated in Cyprus by this Ordinance (No. 20 of 1895) which regulates (i.) the succession to property of all persons domiciled in Cyprus; (ii.) the succession to immovable property in Cyprus of any person not domiciled there (art. 4). The law does not apply to the property of deceased Muhammadans (art. 63).

See further as to the laws of Cyprus, "The Destour," or official compilation, published at Constantinople; "Legislation Ottomane," by Aristarchi Bey, a French translation of the more important laws; the Mejlé (Ottoman Civil Code), translated by Grigsby, 1895, and by Tyser, 1901; Ottoman Commercial

Code (Amirayan); Ottoman Land Code (Ongley); and "Sketch of the Ottoman Land Code," by Mr. Justice Middleton, Jour. Comp. Leg. N.S. 1 (1900), p. 141; Cyprus Laws and Ordinances; Cyprus Law Reports. Among the other sources of law in Cyprus—although it is, strictly speaking, rather a diplomatic instrument assuring the rights of the Christian subjects of the Porte than a principal source of law—is the solemn edict of November 3rd, 1839, "referred to in subsequent discussions as a sort of Turkish Magna Charta, usually, under the name of the Act of Gul-Hane" (Parapano v. Happaz, *ubi supra*). It is chiefly concerned with asserting the equality of Ottoman subjects in various matters, and the authority of Courts of law (S. C.). The Hatti Humaïoun resulted from pressure put by the Christian Powers on the Porte, during the disturbance of the Crimean war, to give greater security to its Christian subjects. The original was in French, a copy of which was handed by Fuad Pasha to Lord Stratford de Redcliffe, and was laid before the Houses of Parliament with an official English translation, which is now in the Foreign Office. "The version given in the book of Aristarchi Bey, entitled 'Legislation Ottomane,' is incorrect" (S. C., *ubi supra* at p. 172). See also, cited in the

**Courts of Law.**—Judicial powers are exercised in Cyprus by the following tribunals :—

(I.) **Supreme Court.**—The Supreme Court consists of a Chief Justice and one Puisne Judge (*f*). It exercises appellate jurisdiction over the District Courts, where the matter in issue amounts to £20, and in other cases by leave of the District Court or Supreme Court (*g*), and may also hear criminal appeals from the decisions of District Courts (*h*), where the defendant is liable to a penalty of £10, or to imprisonment without the option of a fine (*i*), and appeals from a Magisterial Court where the defendant is adjudged to be imprisoned without the option of a fine (*k*). Appeals lie to the Privy Council from final judgments for sums of the amount or value of £500 (*l*). The Supreme Court exercises an original criminal jurisdiction under the Cyprus Neutrality Order in Council, 1881 (*m*), and also under the Cyprus Extradition Order in Council, 1881 (*n*), and there is now (*o*) vested in it all the bankruptcy, probate,

same case (*ubi supra*) at pp. 172, 173, passages from a memorandum addressed by Aali Pasha, the Grand Vizier, on May 13th, 1855, as to the policy of the Porte towards the laws of its non-Mussulman subjects, and from the Hatti Humaïoun itself; also a passage from a minute (of which a copy will be found in the "Legislation Ottomane," vol. ii., p. 24), addressed on May 15th, 1867, by Fuad Pasha, the Turkish Minister of Foreign Affairs, on the subject of the Hatti Humaïoun, to the representatives of the Porte at London, Paris, Vienna, Berlin, St. Petersburg, and Florence. In the important and interesting case above referred to the following summary is given of the traditional policy of Muhammadan conquerors in Europe as well as in Asia (*ubi supra* at p. 171). "There is nothing improbable in supposing that when Muhammadans conquered territories inhabited by people of another creed supported by strong religious organisations, they smoothed their way by leaving important local and personal usages to a great extent undisturbed. Such was certainly the

policy of Mahomet in the fifteenth century, and probably Selim II. acted on the same principles in the sixteenth. What are the precise usages so left undisturbed is a matter for inquiry in each country."

(*f*) Cyprus Courts of Justice Order, 1882, as amended in 1902 (noted here as Order in Council, 1882; Stat. R. & O. Rev., vol. v., "Foreign Jurisdiction," p. 343, s. 4).

(*g*) *Ibid.*, ss. 31, 32.

(*h*) *Ibid.*, s. 51.

(*i*) Ordinance No. 1 of 1886, s. 34.

(*k*) Order in Council, 1882, s. 81.

(*l*) Order in Council of 15th July, 1881, confirmed by Order in Council, 1882, s. 41. (Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 319).

(*m*) Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 307; and Order in Council, 1882, s. 22.

(*n*) Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 322; and Orders in Council, 1895, March 8th; December 12th (*ibid.*, pp. 418, 419).

(*o*) Cyprus Courts of Justice Order, 1883, Stat. R. & O. Rev., 1904, *ibid.*, p. 412.

matrimonial and other jurisdiction formerly vested in the High Court for Cyprus. It is a Colonial Court of Admiralty within the Colonial Courts of Admiralty Act, 1890 (*p*).

(II.) **Six Assize Courts** are established in the different Cazas—*i.e.*, administrative divisions—under judges of the Supreme Court assisted by judges of District Courts. For the trial of Ottoman subjects, the Assize Court is to include not less than two, and, if practicable, all three, of the judges of the District Court of the Caza in which it sits. For the trial of treason, murder, manslaughter and any offence punishable with imprisonment for life, the Assize Court is to include two judges of the Supreme Court (*q*). The Assize Courts have jurisdiction to try all offences committed in Cyprus (*r*).

(III.) **There are six District Courts** in the different Cazas, consisting of three judges, one of whom is designated the President, while of the others one must be a Christian and the other a Moslem (*s*); the District Court has appellate jurisdiction over village judges (*t*), and over the President or any ordinary member of the District Court acting as village judge (*u*). The President of the District Court has jurisdiction to try "foreign actions" (*x*), *i.e.*, actions in which the defendant, or any defendant, is not an Ottoman subject, but by consent of parties such actions may be heard by the full District Court (*y*). The District Court has also jurisdiction to hear all "Ottoman actions" (*z*), *i.e.*, actions in which the defendant is, or all defendants are, an Ottoman subject or Ottoman subjects, in the first instance not being within (i.) the jurisdiction of the village judge or (ii.) the exclusive jurisdiction of a Mussulman religious Court (*a*), and (*b*) this jurisdiction may be exercised by any judge of the District Court in any action where (a) any party fails to appear at the time fixed by writ of summons, or, (b) parties having appeared, the defendant admits the plaintiff's claim. The District Court has

(*p*) 53 & 54 Vict. c. 27. See Cyprus Admiralty Jurisdiction Order, 1893 (Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 416); also *The Invermay v. The San Giovanni Batista* (1895), 3 Cyp. L. R. 80.

(*q*) Order in Council, 1882, s. 6.

(*r*) *Ibid.*, s. 50. As to appeals to Supreme Court, see I., *supra*.

(*s*) *Ibid.*, s. 5.

(*t*) *Ibid.*, s. 29; and see V., *infra*.

(*u*) *Ibid.* As to appeals to Superior Court, see I., *supra*.

(*x*) *Ibid.*, s. 3.

(*y*) *Ibid.*, s. 30.

(*z*) *Ibid.*, s. 3.

(*a*) *Ibid.*, s. 29.

(*b*) Ordinance No. 1 of 1897, s. 1.

jurisdiction to entertain claims for partition of immovable property, without, however, prejudicing the right of village judges in cases where no question of title is raised to try such claims as to property situate within their local jurisdictions (*c*). It has criminal jurisdiction up to three years' imprisonment (*d*).

(IV.) **Six Magisterial Courts** in the different Cazas are constituted in each case of the President of the District Court, sitting alone, or two ordinary judges sitting together without the President (*e*). They have jurisdiction up to one month's imprisonment and a fine of £5 (*f*). Appeals lie to the Supreme Court (*g*).

(V.) **Village Judges** (*h*)—*i.e.*, the President and ordinary judges of the District Courts and appointed judges (*i*)—with civil jurisdiction in debt, commonage, and partition (*k*), up to £5 (*l*), and power to impose fines for trespass on immovable property (*m*).

(VI.) **Mehkémé-i-Sheri**, Mussulman religious tribunals whose jurisdiction is restricted to the cognisance of religious matters concerning persons of the Mussulman faith (*n*). The Archbishop of Cyprus has jurisdiction in matrimonial causes concerning persons belonging to the Orthodox Eastern Church, and the validity of divorces granted by him in such matters is recognised in the Civil tribunals (*o*).

(*c*) Ordinance No. 1 of 1897, s. 2.

(*d*) Order in Council, 1882, s. 49.

(*e*) *Ibid.*, s. 7.

(*f*) *Ibid.*, s. 48.

(*g*) Order in Council, 1902, s. 12.

(*h*) Order in Council, 1882, s. 8.

(*i*) *Ibid.*, s. 10.

(*k*) See III., *supra*.

(*l*) See *Yeorghi v. Eleftheriou* (1894), 3 Cyp. L. R. 35.

(*m*) Order in Council, 1882, s. 34.

(*n*) *Ibid.*, s. 20; and see Ordinance No. 4 of 1883.

(*o*) Note by Mr. A. G. Lascelles, K.C., Attorney-General of Ceylon, Jour. Comp. Leg. (1900) N. S. ii., p. 87.



## CHAPTER III.

### THE EMPIRE OF INDIA.

**Political Tribunals in the Protected States.**—The broad distinction between (1) the dominions of the Crown constituting British India, which are governed by His Majesty through the Governor-General of India or a Governor of a Presidency, or other subordinate officer, and (2) the territories, outside British India, of Native Princes and Chiefs under the suzerainty of the Crown, exercised through the same authorities, has already been pointed out in Part I.; and it will be convenient, before proceeding to deal with the juridical system of British India, to refer briefly to the position of tribunals presided over by British officers in Native States, who exercise either (1) in certain cases, in the territories of some of the States—for and on behalf of those States and over their subjects—a civil and criminal jurisdiction vesting in the States concerned; or (2) in the territories of certain States—for and on behalf of the Crown—a territorial civil and criminal jurisdiction which has been ceded to the Crown by the States concerned over their own subjects within certain areas; or (3) in the territories of the Native States generally—for and on behalf of the Crown—any personal civil and criminal jurisdiction which the Crown may possess over its own subjects therein, or may by lawful means acquire over other persons therein. The position of tribunals dealing with cases falling under the second and third of these categories is that of British Courts of Justice, and will be considered presently under the sub-title “Exterritorial Jurisdiction” (a). The action of British officers in adjudicating cases falling under the first category is not, however, that of British Courts. It is really taken by them, as will now be explained, as political officers through whom the suzerainty of the Crown is exercised, and is concerned with litigation with which no British Courts of Justice are empowered to deal. It is essentially political action, though it may be distinguished from action in matters involving only political considerations—as, for instance, in

(a) See p. 157.

the case of disputes between two neighbouring States, which are settled by those officers by way of effective diplomatic mediation or arbitration, for the better protection of the States and the maintenance of the rights and the peaceable enjoyment of the possessions guaranteed by the paramount Power.

The circumstance has already been noted that the Protected States exercise various functions of Government which are commonly regarded as attributes of sovereignty; although (as is recited in the preamble to 39 & 40 Vict. c. 46) they have "no connexions, engagements, or communications with foreign powers." The Native States vary considerably in size and wealth, and it is only in the larger States that the Princes and Chiefs exercise complete civil and criminal jurisdiction within their own territories. In some of the smaller States—and notably in Kathiawar—it has become necessary, in the exercise of the suzerainty of the Crown, to regulate the limits of the jurisdiction to be exercised by the actual rulers of the States, who, for this purpose, have been arranged in classes, with defined civil and criminal powers. In cases arising within any such State which are beyond the competence of the Chief, as thus defined, jurisdiction is exercised by the political officers, and appeals from their decisions are heard by the local British Government, from whose decisions again an appeal can be made to the Secretary of State. This "residuary" jurisdiction, as it is sometimes styled (*a*), is exercised for and on behalf of the Chiefs, and, in most cases, to such extent only as may be deemed to be necessary for the maintenance of peace, good order, and security. The principle extends even to the smallest States, consisting sometimes of a few villages only, or, it may be, of a single village, or a part of a village, the rulers of which are not qualified to exercise civil judicial powers at all.

For the guidance of the political officers entrusted with the disposal of these cases, rules of procedure may be made by the Government of India, or by any authority to whom the control of those officers may be delegated by the Government of India. The rules may be in the precise terms of the various British Indian Codes, or other laws in force in British India, or may be adaptations of those laws, but they are not extended to the Native States by any Indian Legislature; and, indeed, the Council of the Governor-

(*a*) Lee-Warner, "Protected Princes of India," p. 329.

General for making laws and regulations is not empowered to make laws for the Native States or the subjects of those States, or, indeed, for any Courts of Justice, or places or things in those States; though it can legislate, under the Indian Councils Act, 1861, and subsequent Acts amending it, for servants of the British Indian Government, for European British-born subjects, and for native Indian subjects of the Crown in those States (b). Accordingly, such rules are prescribed by executive orders in the form of notifications in the official *Gazettes*.

In *Hemchand Derchand v. Azam Sakarlal*, and *The Taluka of Kotda-Sangani v. The State of Gondal* (c) (two cases which were heard together), it was decided by the Privy Council, as regards the States of Kathiawar, under the political administration of the Government of Bombay, that Kathiawar is not, as a whole, within the King's dominions, and that the action of the tribunals presided over by the political officers in respect of the indigenous litigation of the country not dealt with by the States themselves, and that of the Governor of Bombay in Council, on appeal from those tribunals, is properly to be regarded as political action, and not judicial, and that, therefore, no appeal lies in such litigation to the King in Council. The same remark applies to the decisions of the Secretary of State on appeal from the Governor in Council in litigation of this character. One of the cases in question was a civil case falling within the residuary jurisdiction above referred to, and the other a strictly political case, between two Chiefs of high rank, and involving their rights of sovereignty over a certain village. Both of these cases were held to be outside the scope of the Indian Foreign Jurisdiction and Extradition Act XXI. of 1879, which, while in force, did not affect the subjects of Native States, but extended only to British India, to European British subjects in Native States, and to native Indian subjects of the Crown in any place beyond the limits of British India. Sections 4 and 5 of the Act may indeed have been regarded by the Government of India, in the past, as regulating the exercise by British political officers of the residuary jurisdiction in Native States between the subjects of those States; but it is clear from the judgment of the Privy Council, in these two cases, that any such

(b) See 24 & 25 Vict. c. 67, s. 22; Vict. c. 98, s. 1.  
 27 & 28 Vict. c. 17, s. 1; and 32 & 33 (c) L. R. 33 Ind. Ap. 1.

view is no longer tenable, and that the exercise of the jurisdiction described in the preamble to the Act, as having been acquired by the Governor-General of India in Council "by treaty, capitulation, grant, usage and other lawful means" . . . "within divers places beyond the limits of British India," could only have been regulated by the Act "so far as it was competent to the Indian Legislature to do so, that is to say, so far as it affected persons for whom that Legislature could make laws." Notifications issued under the authority of those sections were valid, by virtue of the Act, only so far as they affected persons in Native States to whom the Act extended. As regards such persons, the jurisdiction exercised was an exterritorial judicial jurisdiction delegated by the Government of India, as representing the Crown, to officers presiding over British Courts of Justice in Native States. The notifications, so far as they affected the subjects of those States and the exercise by political officers of any "residuary" jurisdiction, derived their validity, not from the Act, but from the political authority vested in the Crown and known as suzerainty, which is exercised by the King, through the Governor-General and other officers, in discharge of an imperial duty associated with the imperial power of the Crown in India (*d*). In the Kathiawar States the suzerainty of the Crown was first exercised in the "settlement" made by Colonel Walker in 1807, to which the Gaekwar of Baroda and the Chiefs of Kathiawar were parties. It provided for a fixed tribute from each Chief, which was secured by a system of mutual guarantees, for the cessation of invasions of Kathiawar by the Gaekwar's army for the purpose of collecting tribute due to the Baroda State, and for the maintenance of peace and order between the States themselves (*e*).

**Exterritorial Jurisdiction.**—In the different Indian States outside British India the rights acquired by the Crown in or over their territories "differ" (as is observed in the judgment in the two Kathiawar cases) "not only in origin, but in kind and degree." So that, "in each instance in which the nature or

(*d*) In modern times the term has been used "as descriptive of relations, ill-defined and vague, which exist between powerful and dependent States; its very indefiniteness being its recommendation"; but "definitions of suzerainty are of little use. Each

instrument in which the word is used must be studied in order to ascertain its significance." Macdonell, Article on "Suzerainty," in "Encyclopædia Britannica," vol. xxxiii., p. 108. See also the remarks above at p. 43.

(*e*) L. R. 33 Ind. Ap., at p. 19.

extent of such rights becomes the subject of consideration, inquiry has to be made into the circumstances of the particular case. In accordance with this, in *Muhammad Yusuf-ud-din's* case (*f*), in which the question was as to the nature and extent of the railway jurisdiction vested in the British Indian authorities within the dominions of the Nizam, the case was decided upon the construction of the correspondence in which the cession of the jurisdiction was embodied." In that case it was held that the jurisdiction conceded must be limited to jurisdiction required for railway purposes. The provisions, relating to extraterritorial jurisdiction, of the Indian Act XXI. of 1879—which was repealed by Act XV. of 1903—are now displaced by the Order in Council issued under the Foreign Jurisdiction Act, 1890 (*g*), on June 11th, 1902, and published in the *Gazette* of June 13th, 1902 (*h*). The Order in Council is, to a certain extent, *in pari materia* with the repealed Indian Act XXI. of 1879, but differs from it in recognizing the powers and jurisdiction described in the preamble as vesting in His Majesty, and not (as in the Act) in the Governor-General of India in Council. It has also a wider scope, as its application is not limited to the exercise of a personal judicial jurisdiction only—over those European and Indian British subjects who alone were affected by the foreign jurisdiction clauses of the Act of 1879—but extends also to the exercise of a territorial judicial jurisdiction over the subjects of Native States in all places within which such jurisdiction has been ceded by any of the States to the Crown. It does not, of course, govern the exercise by political tribunals of the residuary jurisdiction just described. The following is the text of the Order in Council:—

"Whereas by treaty, grant, usage, sufferance, and other lawful means, His Majesty the King has powers and jurisdiction, exercised on his behalf by the Governor-General of India in Council, in India, and in certain territories adjacent thereto;

"Now, therefore, His Majesty, by virtue and in exercise of the powers by the Foreign Jurisdiction Act, 1890, or otherwise in His Majesty vested, is pleased, by and with the advice of his Privy Council, to order, and it is hereby ordered as follows:—

(*f*) L. R. 24 Ind. Ap. 137.

(*g*) 53 & 54 Vict. c. 37.

(*h*) Stat. R. & O. 1902, No. 466;

"Foreign Jurisdiction—India outside British India," Stat. R. & O. Rev.

1904, vol. v., p. 423.

"1. This Order may be cited as the Indian (Foreign Jurisdiction) Order in Council, 1902.

"2. The limits of this Order are territories of India outside British India, and any other territories which may be declared by His Majesty in Council to be territories in which jurisdiction is exercised by or on behalf of His Majesty through the Governor-General of India in Council, or some authority subordinate to him, including the territorial waters of any such territories.

"3. The Governor-General of India in Council may, on His Majesty's behalf, exercise any power or jurisdiction which His Majesty or the Governor-General of India in Council for the time being has within the limits of this Order, and may delegate any such power or jurisdiction to any servant of the British Indian Government in such manner, and to such extent, as the Governor-General in Council from time to time thinks fit.

"4. The Governor-General in Council may make such rules and orders as may seem expedient for carrying this Order into effect, and in particular—

"(a) for determining the law and procedure to be observed, whether by applying with or without modifications all or any of the provisions of any enactment in force elsewhere, or otherwise;

"(b) for determining the persons who are to exercise jurisdiction, either generally or in particular classes of cases, and the powers to be exercised by them;

"(c) for determining the courts, authorities, judges and magistrates, by whom, and for regulating the manner in which, any jurisdiction, auxiliary or incidental to or consequential on the jurisdiction exercised under this Order, is to be exercised in British India;

"(d) for regulating the amount, collection, and application of fees.

"5. All appointments, delegations, certificates, requisitions, rules, notifications, processes, orders, and directions made or issued under or in pursuance of any enactment of the Indian Legislature regulating the exercise of foreign jurisdiction, are hereby confirmed, and shall have effect as if made or issued under this Order.

"6. The Interpretation Act, 1889, shall apply to the construction of this Order."

Civil and criminal jurisdiction has been ceded to the British

Government over various tracts in the territories of the Native States on which railways have been constructed, and also in British Cantonments in those territories, in certain civil stations where the political officers have their headquarters, and in certain areas more or less extensive which have been leased to the British Government. In such places the officers of the British Government do not exercise jurisdiction on behalf of the Chiefs. When exercising civil and criminal jurisdiction there, between the persons subject thereto, they would be bound to observe the law and procedure determined by the rules and orders made under clause 4 (a) of the Order in Council of June 11th, 1902. If any Courts, authorities, or judges in British India are invested, in pursuance of clause 4 (c), with the highest appellate jurisdiction that is exercised over such tracts and places, then an appeal would lie from those Courts, authorities, and judges to the King in Council; or, if such jurisdiction be exercised by a political officer within the Native State, then an appeal would lie from him also to the King in Council. Thus the Privy Council has heard an appeal (i) from the Resident in Mysore in respect of an order made by him as the presiding judge of a Court in the Cantonment of Bangalore, which is in the Mysore State, but is administered by the British Government under an agreement with the Maharaja of Mysore. And so also the province of Berar, which has been leased in perpetuity by the Nizam of Hyderabad to the British Government, is not British territory; but as it is governed by the Crown, through the Governor-General of India and the Chief Commissioner of the Central Provinces, the Courts in that province, though exercising civil and criminal jurisdiction over the subjects of His Highness the Nizam, do so on behalf of the Crown, and, as regards appeals to the Privy Council, would appear to be practically on the same footing as the Courts of British India. A similar remark applies to the British Courts exercising judicial jurisdiction in those portions of Baluchistan which are held under a perpetual lease from the Khan of Kalat. In *Triccam Panachand v. The Bombay, Baroda, and Central India Railway Company* (k) the Bombay High Court held that the Wadhwan Civil Station in Kathiawar was in British India, though the neighbouring country was foreign territory. This decision was not, however,

(i) See *In re Lubeck* (1905), L. R. 32 Ind. Ap 217. (k) (1885) I. L. R. 9 Bom. 244.

followed in *Queen-Empress v. Abdul Latib* (l), the Court having held that the Rajkot Civil Station is not a part of British India within the meaning of 21 & 22 Vict. c. 106. Both of these places are occupied by political officers as civil stations under agreements made with the Chiefs of Wadhwan and Rajkot respectively; and rent is paid for them (m). If the later of these two decisions is to be preferred, the civil and criminal jurisdiction exercised by political officers, over the sites of these stations, and other places similarly occupied, between persons subject, under any arrangement made with the Chiefs, to the jurisdiction, would be an ex-territorial judicial jurisdiction, the exercise of which would be regulated by the provisions of the Order in Council of June 11th, 1902.

That Order would also govern proceedings in Native States affecting persons to whom the Act of 1879 extended, and such other persons as might, by any lawful means, become subject to the jurisdiction referred to in the preamble to the Order.

**Growth of Legislative Powers and of the Juridical System of British India.**—The growth and development of the legislative powers of the British Indian Governments and of the juridical system of British India, from the time of the earliest charters granted by the Crown, will now be considered.

**The Charters.**—By the first Charter, granted by Queen Elizabeth on December 31st, 1600, power was conferred on the East India Company to make laws and ordinances for the government of factors, masters, mariners, and other officers employed on their voyages, and to punish offenders by fine or imprisonment. This limited power was renewed by James I. in 1609, without any modification; but in 1615 a further power was given to the Company, by Royal grant, to provide for the adequate punishment of graver offences, including offences against martial law, committed during a voyage; and in 1623 this jurisdiction was enlarged so as to include the punishment by the Presidents and other chief officers of the Company's settlements of such offences committed by the Company's servants on land. Capital cases were by both of these grants to be submitted to the verdict of a jury. By the Charter granted in 1661, by Charles II., the Company were given command over their fortresses,

(l) I. L. R. 10 Bom. 186.

Mayne, "Criminal Law of India,"

(m) See Aitchison, "Treaties," 3rd ed., vol. vi., pp. 282, 285. See also

3rd ed., ch. ii., paras. 39—41.



and the Governor and Council of each factory were given civil and criminal jurisdiction, according to the laws of England, over all persons "belonging to" them, or "under" them; but, until 1678, no arrangements seem to have been made for the exercise of this jurisdiction; and then apparently the requisite arrangements were made at Madras only. At places where there was no Governor, the Chief Factor and the Council were empowered to send offenders either to a place where there was a Governor with a Council, or to England, for punishment (*n*).

By the Charter of 1669, the port and island of Bombay, which had been ceded by Portugal in 1661, were granted to the East India Company, to be held of the Crown "as of the manor of Greenwich in free and common soccage," for the annual rent of 10*l*.; and the Company were authorised to make laws, ordinances and constitutions for the good government of the ceded territory, and to exercise judicial authority, by their Governors and other officers, in the island (*o*).

Two Courts of Judicature were accordingly formed—apparently as a temporary measure—in Bombay. The Inferior Court consisted of a Company's civil officer, assisted by native officers, with limited jurisdiction, and the Superior Court consisted of the Deputy Governor and Council, "whose decisions were to be final and without appeal, except in cases of the greatest necessity" (*p*). At that time, and until 1687, Bombay was subordinate to the President and Council at Surat.

By the Charter of 1683 (35 Charles II.) the Company were empowered to execute and use martial law, subject to the sovereign rights of the Crown and its power of making peace and war, within the forts and other places specified therein, for their defence against foreign invasion or domestic insurrection. A Court of Judicature, with Admiralty jurisdiction, was also established, for such place or places as the Company might direct, for the trial of certain specified cases, according to the rules of equity and good conscience and the laws and customs of merchants. The Court was to consist of one person learned in the civil law and two merchants (*q*). By the Charter of 1686 (2 James II.) these

(*n*) Ilbert, "Government of India," East India Company from 1600 to 1761," Preface, p. ix.  
pp. 4—18.

(*o*) *Ibid.*, pp. 19, 20.

(*q*) *Ibid.*, pp. 69—73.

(*p*) Shaw, "Charters relating to the

provisions were ratified and confirmed (*r*), and they were repeated in the Charter of 1698 (*s*). The Charter of 1686 further authorised the Admirals and other sea-officers—to be appointed by the Company—to exercise, in times of open hostility with another nation, within their ships, “on the other side of the Cape of Good Hope,” the law martial for the defence of their ships against the enemy (*t*).

In 1687, James II. delegated to the East India Company the power of establishing a municipality at Madras. A Corporation, consisting of a Mayor, Aldermen, and Burgesses, was accordingly formed by the Company, under a Charter granted in that year, and the Mayor and Aldermen were constituted a Court of Record, with civil and criminal jurisdiction, from whose decisions in civil cases, where the decree was for a sum exceeding three pagodas, and in criminal cases, where the sentence was for taking away the life or limb of any offender, an appeal lay to the Supreme Court of Judicature, “commonly called our Court of Admiralty.” Provision was also made for the appointment of a Recorder to assist the Mayor in cases of any considerable value or intricacy (*u*).

In 1726 a Charter (13 Geo. I.) was granted for the purpose of placing the administration of justice by the Company on a firmer foundation than had been provided by any previous Charter. The Company were permitted to establish or remodel a Mayor's Court in each of the three Presidency towns of Madras, Bombay and Calcutta, which, as a consequence of the protection afforded by “a strict and equal distribution of justice,” had become very “populous” (*x*). The Court was to be a Court of Record, and was to consist of a Mayor and Aldermen, with power to try civil cases of all descriptions. The Governor, or President, and Council were constituted a Court of Appeal, and a further appeal was provided to the King in Council in cases in which the value of the subject-matter was in excess of 1,000 pagodas. The President and five senior Councillors were further constituted a Court of Record, of the nature of a Court of Oyer and Terminer, with power, as Justices of the Peace, to hold Quarter Sessions for the trial of all criminal cases except cases of high treason.

The Charter of 1726 was superseded by that of 1753 (26

(*r*) Shaw, “Charters,” pp. 80, 81.

(*s*) *Ibid.*, pp. 154, 155.

(*t*) *Ibid.*, p. 82.

(*u*) *Ibid.*, pp. 88, 89.

(*x*) *Ibid.* p. 230.

Geo. II.), which was the final authority for the constitution of the different Courts then recognised, and provided also a Court of Requests for each Presidency town for the trial of suits for the recovery of small debts not exceeding the value of five pagodas (*y*). By the Charter of 1753 suits and actions between "Indian natives only" were excepted from the jurisdiction of the Mayor's Court (*z*); but, if the parties could not settle their disputes among themselves, they could submit them to the Mayor's Court for decision. This exception does not seem to have been acted on in the Presidency town of Bombay (*a*).

In 1765 a new era began, for, in that year, the East India Company acquired territorial powers in Bengal, Behar, and Orissa, under a grant, from the Moghal Emperor, Shah Alam II., of the "Divani," that is, of the control of the revenues and of the civil administration of those provinces. It practically included also a cession of the military government of the three provinces; and has been regarded as a cession "in fact, though not in name," of sovereign rights over the territory, inasmuch as "it was a cession of all the essentials of sovereignty." Full sovereign rights cannot, however, be said to have been acquired for the British Crown till after the battle of Delhi in 1803, when the Emperor, Shah Alam II., on being released by Lord Lake from the captivity in which he had been held by the Mahrattas, placed himself unreservedly under British protection. By the beginning of 1806 the sovereignty of the Bengal Presidency had been acquired; and the British power had then become paramount in India (*b*). The "Nizamat," or criminal administration, continued to be vested in the Emperor after 1765, and was exercised through the Nawab of Murshidabad and various Muhammadan Courts and Zamindars. During the transitional period immediately following the grant, the actual administration of civil justice was also largely left to the Nawab; but in 1772 the Company assumed direct responsibility for the administration of

(*y*) Mill and Wilson, "Hist. of British India," vol. iii., p. 14; and Shaw, "Charters," pp. 265, 271, 275.

(*z*) Shaw, "Charters," p. 274.

(*a*) Morley, "Digest," Introd., p. clxix. As to the bearing of the Charters of 1726 and 1753 on the question of the precise date on which

the English criminal law was introduced into the Presidency towns, see Ilbert, "Government of India," pp. 34, 35, and 387. See also Morley, "Digest," Introd., pp. xi. and xxiii.

(*b*) See Field, "Introduction to the Regulations of the Bengal Code," ch. i.

both civil and criminal justice by establishing Courts in each district known as a Collectorship. The Collector presided in the District Civil Court "in his quality of King's diwan," and the Kazi and Mufti of the District sat in the Criminal Court, under the superintendence of the Collector, to expound the Muhammadan law. Superior Courts of appeal and revision, styled the Courts of Sadar Divani Adalat and Sadar Nizamat Adalat, were established at Calcutta. All these Courts derived their jurisdiction theoretically from the native Government, not from the Crown (*c*). Similar Courts were subsequently established in the Madras and Bombay Presidencies. The Superior Court of Criminal Appeal and Revision in each of these Presidencies was styled the Court of Sadar Fauzdari Adalat. In 1831 Courts of Sadar Divani and Nizamat Adalat were established for the North-Western Provinces with the same powers as were vested in the Calcutta Courts (*d*).

**Regulating Act of 1773.**—By the Regulating Act of 1773 (18 Geo. III. c. 68)—which placed the Governments of Madras and Bombay under the superintendence and control of the Governor of Bengal and his Council—the Mayor's Court of Calcutta was abolished, and the Crown was empowered to establish by Charter a Supreme Court of Judicature at Fort William, and that Court was accordingly constituted in 1774, with common law, equity, criminal, ecclesiastical and Admiralty jurisdiction, subject to an appeal to the Privy Council; and its jurisdiction extended to all British subjects residing in Bengal, Behar, and Orissa, under the protection of the Company. By the same Act the Governor of Bengal and his Council—who, in 1774, became the Governor-General of Bengal in Council—were empowered to make rules, ordinances, and regulations for the good order and civil government of Fort William and its subordinate factories, subject to assent, approval, registration, and publication by the Supreme Court, and disallowance by the Privy Council. The Regulations made under this authority and under the Act of 1781 (see below), up to the year 1798, were collected by Lord Cornwallis into a Code, which was added to down to the year 1834 (*e*). Similar Regulations were applied to

(*c*) Ilbert, "Government of India," p. 46.      tutation of the Courts and Legislative Authorities in India," pp. 114, 136.

(*d*) Cowell, "History and Consti-

(*e*) Ilbert, pp. 50, 58, 61, 74, 86.

Madras and Bombay in 1799 and 1801, and were extended to the North-Western Provinces in 1803 (f); and in 1807 the same powers were given by 47 Geo. III., Session 2, c. 68, to the Governors and Councils of Madras and Bombay to make laws and Regulations, as had been given by the Act of 1773 to the Governor-General in Council as regards Bengal. Under these powers the Madras and Bombay Councils continued to make Regulations till 1834, the Bombay Regulations up to 1827 having been codified in that year by Mr. Mountstuart Elphinstone.

Sir Courtenay Ilbert explains in a passage which may here be referred to (g) how the grant of the "Divani" in 1765 created a relation between the East India Company and the Emperor of Delhi, in respect of the provinces of Bengal, Behar, and Orissa, which, in the language of modern international law, would be called a protectorate. The Act of 1773 recognised the situation; but its provisions proved to be quite inadequate for the settlement of many important questions arising out of the circumstances and conditions of the time, and gave occasion for serious and unseemly conflicts between the Supreme Court and the Executive Government.

**Amending Act of 1781.**—Accordingly, in 1781, an amending Act (21 Geo. III. c. 70) was passed for the purpose of dealing with some of these questions. By that Act matters concerning the revenue and orders made by the Governor-General and Council in their public capacity,—except orders affecting "British subjects,"—were excepted from the jurisdiction of the Supreme Court; and that jurisdiction was more clearly defined in its relation to various classes of the community. Thus effect was given, as regards the Supreme Court of Calcutta, to the principle adopted by Warren Hastings, and already adverted to in Part I., that, in certain civil matters, the questions in dispute in actions and suits should be determined, in the case of Muhammadans and Hindus, by their respective laws and usages; and "where only one of the parties shall be a Mahomedan or Gentu by the laws and usages of the defendant." The Act further recognised the jurisdiction of the Provincial Courts and the appellate jurisdiction of the Governor-General and Council in provincial cases. In civil cases, the value of which exceeded £5,000, a further appeal was provided to the

(f) Ilbert, "Government of India," p. 549. . (g) *Ibid.*, pp. 53, 54.

Privy Council. By the Act of 1781, moreover, the Governor-General and Council were empowered, from time to time, to frame regulations "for the Provincial Courts and Councils" without submitting them to the Supreme Court for approval and registration. It was under this new power that "most of the regulation laws for Bengal purported to be framed" (*h*).

**Acts of 1784, 1786, 1790, 1797, 1800, 1813 and 1823.**—By the Act of 1784 (24 Geo. III. sess. 2, c. 25), which made the Board of Directors of the East India Company subordinate to a Board of Control, representing the British Government, and styled the "Commissioners for the Affairs of India," all British subjects were declared to be amenable to all Courts of competent jurisdiction in India or in England for acts done in Native States as if they had been done in British territory (*i*), and provision was made for the constitution of a special Court in England for the trial of offences committed in India; but to this provision no effect was given (*k*). By an Act of 1786 (26 Geo. III. c. 57) the criminal jurisdiction of the Supreme Court at Calcutta was extended to all criminal offences committed in any part of Asia, Africa, or America, beyond the Cape of Good Hope to the Straits of Magellan, within the limits of the Company's trade: and the Governor or President and Council of Fort St. George, in their Courts of Oyer and Terminer and gaol delivery, and the Mayor's Court at Madras, were given civil and criminal jurisdiction over all British subjects in the Company's territories on the Coromandel Coast, or any other part of the Carnatic, or in the Northern Circars, or in the territories of the Soubah of the Deccan, the Nabob of Arcot, or the Rajah of Tanjore. In 1790 Circuit Courts were established, which are, at the present time, represented by the Courts of Session in the several sessional divisions. An Act of 1797 (37 Geo. III. c. 142) reduced the number of Judges of the Calcutta Supreme Court and substituted a Recorder's Court for the Mayor's Court at Madras and Bombay. A Supreme Court for Madras was established there in 1801, under an Act of 1800 (39 & 40 Geo. III. c. 79), and a Supreme Court for Bombay was established there, in supersession of the Recorder's Court, in 1823, under 4 Geo. IV. c. 71. At Bombay conflicts

(*h*) Ilbert, "Government of India," s. 44.  
pp. 58—62.

(*k*) *Ibid.*, ss. 66—80; and see Ilbert,  
(*i*) 24 Geo. III. sess. 2, c. 25, "Government of India," p. 68, note 4

arose between the Supreme Court and the Executive Government similar to those which had previously arisen at Calcutta after the passing of the Regulating Act of 1773 (*l*); and difficulties were also caused by the union of revenue and civil jurisdictions in the Provincial Courts.

Previously to the establishment of the Supreme Court at Bombay, an Act (53 Geo. III. c. 155) was passed in 1813, which gave justices of the peace jurisdiction in cases of assault or trespass committed by British subjects on natives of India and also in cases of small debts due to natives of India by British subjects. Special provision was also made for the exercise of criminal jurisdiction over British subjects residing at a distance of more than ten miles from a Presidency town. British subjects residing, or trading, or occupying immovable property beyond that distance were made subject to the jurisdiction of the local Civil Courts (*m*). In the Presidency towns Courts of Small Causes were first established under the Indian Act of 1850, in supersession of the Courts of Request established under the Charter of 1726.

**Charter Acts of 1833 and 1853.**—The Charter Act of 1833 (3 & 4 Will. IV. c. 85), while requiring the East India Company to close their commercial business, continued the system of dual government sanctioned in 1784, and introduced, at the same time, some important modifications of the legislative powers of the Indian Governments. The power of making regulations was withdrawn from Madras and Bombay: and the whole legislative authority of the Indian Government was centralised in “the Governor-General in Council.” A fourth ordinary member of Council was appointed, who was, however, to act as such only for legislative purposes (*n*).

By the last of the Charter Acts (16 & 17 Vict. c. 95), which was passed in 1853, the fourth or “legislative” Member of the Governor-General’s Council was given the position and the power of voting possessed by the ordinary members of the Executive Council; and the Council was further enlarged by the addition, as legislative members, of the Chief Justice of Bengal, a Puisne Judge of the Supreme Court, and four representative members from Bengal,

(*l*) In re Justices of the Supreme Court of Bombay (1829), 1 Knapp, 1; and Cowell, “Courts and Legislative Authorities,” pp. 108 *et seq.*

(*m*) Ilbert, “Government of India,” p. 82.

(*n*) *Ibid.*, pp. 85, 87.

Madras, Bombay and the North-Western Provinces, who were to be appointed by the local Governments respectively.

In 1854 an Act was passed (17 & 18 Vict. c. 77) which empowered the Governor-General in Council, with the sanction of the Court of Directors of the East India Company and the Board of Control, to take by proclamation under his immediate authority and management any part of the territories in the possession or under the government of the Company, and to provide for its administration. This power has, in practice, been exercised by the establishment of various Chief-Commissionerships, which it was not considered advisable to include within the limits of any Presidency or Lieutenant-Governorship (o).

By the Government of India Act, 1858 (21 & 22 Vict. c. 106), the government of British India came directly under the Crown. The legal and constitutional position of the East India Company during the period which then came to an end was established in a series of judicial decisions and was finally and fully defined in *The Secretary of State in Council v. Kamachee Boyee Sahaba* (p). The Company exercised a delegated sovereignty over the territories under its government, with all powers in connection with the external relations of those territories which were incidental to the exercise of that sovereignty, subject, however, to such restrictions as were imposed by charter or by statute. By the Act of 1858 the delegation of such sovereign power was determined, and it has since been exercised directly on behalf of the Crown,—in India through the same authorities as before, and in England through the Secretary of State, appointed under the Act, to whom the powers formerly exercised by the Court of Directors or by the Board of Control were transferred.

**Indian Councils Act, 1861, and Amending Acts.**—The Legislative Council, as thus constituted by the Act of 1853, took a somewhat spacious view of its functions, and so extended in practice the scope of its duties as to include therein a right of interpellation and discussion as regards the administrative acts of the Executive Government; and those functions were thereupon brought to a close by the Indian Councils Act, 1861 (24 & 25 Vict. c. 67). The services rendered by the Legislative Council, and the

(o) Ilbert, "Government of India," p. 96.

(p) 7 Moore's Ind. Ap. Ca. 476. See also the judgment in the cases of

Hemchand Devchand and Taluka of Kotda-Sangani, L. R. 33 Ind. Ap. 1, at p. 15.



improvements which it had effected in the legislation of India, were, however, officially recognised by the Secretary of State for India, who placed it on record that, since its constitution in 1858, the Council had dealt with "some of the most important questions which could have been submitted to the consideration of any legislative body"; and that the result of its labours had been to place on the Statute Book of India "a series of sound and judicious measures" which entitled it "to the gratitude of the country" (q). The power of legislation was restored by the Act of 1861 to the minor Presidencies, and their Councils were strengthened for the purpose; but greater control over the exercise of that power was given to the Governor-General of India than was the case before the passing of the Act 3 & 4 Will. IV. c. 85 (r). Authority was, moreover, given for the establishment of new Legislatures at any future time. The legislative authority of the Government of India was thenceforward "to be exercised, for the most part, in matters of general administration" affecting the interests of the Indian Empire at large. The designation "Legislative Council" was, however, no longer to be used; as the new Council, though enlarged by the Act, was not to be considered to be "a body separate and distinct from the Council of the Governor-General" (s). By ss. 18 and 19 of the Act the power of the Governor-General's Council was restricted, at meetings "for the purpose of making laws and regulations," to the making of rules for the conduct of business and to the consideration and enactment of legislative measures. No member could make nor could the Council entertain any motion unless it were for leave to introduce some such measure or had reference to a measure already introduced. Nor, without the previous sanction of the Governor-General, could any measure be introduced which would affect the public debt or public revenues of India, the religion or religious rites and usages of the people, the discipline or maintenance of the military or naval forces, or the relations of the Government with foreign Princes or States. For the better exercise of the power of legislation vested in the Government, the

(q) Sir Charles Wood's Despatch 558—570.  
 No. 14 of August 9th, 1861, to the Government of India, para. 2. See Ilbert, "Government of India," pp.  
 (r) *Ibid.*, para. 30.  
 (s) *Ibid.*, paras. 10, 23.

Governor-General was empowered by s. 10 of the Act to nominate certain additional members of his Council, who were to be members for legislative purposes only. No law or regulation was to be valid until the Governor-General had declared his assent to it, and power was given to the Crown to disallow any law passed with such assent, such disallowance being signified through the Secretary of State for India in Council. By s. 22 of the Act the extent of the legislative power of the Governor-General in Council was defined; by s. 23 the Governor-General himself was empowered, in cases of emergency, to make ordinances for the peace and good government of the Indian territories under the dominion of the Crown; and by s. 25, all rules, laws and regulations which had been made for the territories known, from time to time, as the "Non-Regulation Provinces" were declared valid, whether they had been made by the Governor-General, or the Government of India, or the Governor or Government of any Presidency, or by any Lieutenant-Governor. In later sections of the Act, provision is made for legislation by the local Councils, whose constitution and functions are strictly defined. Local legislatures have been established under the Act in the Madras, Bombay, and Bengal Presidencies, in the United Provinces, the Punjab, and Burma, and recently in Eastern Bengal and Assam. The Act was added to or amended, in 1865, by 27 & 28 Vict. c. 17; in 1869, by 32 & 33 Vict. c. 98; in 1870, by 33 & 34 Vict. c. 8; in 1871, by 34 & 35 Vict. c. 34; in 1874, by 37 & 38 Vict. c. 91; and, in 1892, by 55 & 56 Vict. c. 14. Portions of the Act of 1861, which have become obsolete, have been repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19). It is under the authority of the Act of 1861 that most of the laws now in force in British India have been made.

**Indian Councils Act, 1892.**—By the Indian Councils Act, 1892 (55 & 56 Vict. c. 14), provision was made for still further increasing the number of additional members of the several Indian Councils, and an important modification of the provisions of the Act of 1861 was enacted in reference to the business to be considered at meetings for making laws and regulations. The discussion of the annual financial statements of the Government of India and of the local Governments and the asking of questions were allowed at such meetings, subject to such conditions and restrictions as might be made, for their respective Councils, by the Governments concerned,

under higher sanction. No resolution or division in respect of such discussion or in respect of the answer given to any question was, however, permitted.

**Existing Scheme of Civil and Criminal Courts.**—The existing scheme of Civil and Criminal Courts in British India and the administration of justice therein are regulated partly by English statutes, and charters issued under them, and partly by Indian Acts.

**The Chartered High Courts.**—By the Indian High Courts Act, 1861 (24 & 25 Vict. c. 104), the Crown was empowered to establish by letters patent High Courts of Judicature at Fort William in Bengal, Madras and Bombay, and one additional High Court. The additional Court was established at Allahabad in 1866. The three Presidency Courts were constituted by letters patent or charters in 1862, which were revoked by fresh letters patent issued under 28 Vict. c. 15, on December 28th, 1865, whereby the law to be administered by the High Courts was declared, and the civil and criminal jurisdiction, original and appellate, of those Courts was defined, and provision was made for the continued exercise by them of Admiralty, Vice-Admiralty, testamentary, intestate, matrimonial and insolvency jurisdiction, and jurisdiction as to infants and lunatics. The original jurisdiction was confined to cases arising within the Presidency towns, but the local limits could be altered by law, and an extraordinary jurisdiction was also given to each High Court, in civil cases removed for purposes of justice from any Court subject to the superintendence of the High Court, for trial and determination before itself, and in criminal cases over persons residing within the jurisdiction of any such Court. Appellate jurisdiction was given in civil cases from certain judgments of division Benches or of single Judges of the High Court, the appeal lying in other cases (subject to the provisos set forth in s. 39 of the Letters Patent of 1865) to the Privy Council. An appeal was also given to the High Court, both in civil and criminal cases, from the Courts in the provinces, and other Courts subject to its superintendence, in all cases which might by law be subject to such appeal. The new High Courts thus combined in themselves the former jurisdictions of the two sets of Courts which were amalgamated by the High Courts Act of 1861. These were the several Supreme Courts established by the Crown at the Presidency towns in the Presidencies of Bengal, Madras and Bombay, and the several

Courts of Sadar Divani and Sadar Nizamat or Fauzdari Adalat established by the East India Company, as Superior Courts of Appeal and Revision for the provincial districts of those Presidencies. By s. 15 of the High Courts Act of 1861, powers of superintendence were given to each High Court over all Courts subject to its appellate jurisdiction.

**Other High Courts and Courts Subordinate to the High Courts.**—In the Presidencies of Bengal, Madras and Bombay Civil Courts of first instance and of first appeal have been constituted for the areas outside the limits of the ordinary original civil jurisdiction of the High Courts, and their jurisdiction has been regulated, by Indian Acts having local application. Under similar Acts, Courts of first instance and first appeal have been established in the territories subject to the appellate jurisdiction of the Allahabad High Court (*t*), and Courts of first instance and of first and second appeal for each of the Provinces or Chief-Commissionerships or other administrative areas not subject to the jurisdiction of any of the four chartered High Courts. The Court of highest appeal in each of these Provinces, Chief-Commissionerships or other areas, is a High Court within the definition in s. 3 (24) of the Indian General Clauses Act X. of 1897, from which an appeal would lie to the Privy Council. These High Courts, and the Acts under which they have been constituted, are referred to in the Tabulated Statement at the end of this Volume.

Courts of small causes have been established in the three Presidency towns under Act XV. of 1882, and in the Provinces under Act IX. of 1887, and earlier Acts. No appeal in the ordinary sense lies from these Courts; but they are subject to the revisional jurisdiction of the High Courts and to their jurisdiction as Courts of Reference. The powers of a Court of small causes may be conferred on the ordinary Courts of first instance, in respect of petty cases coming before them.

**Law of Evidence.**—The Indian Evidence Act, I. of 1872, contains the rules of evidence by which Civil and Criminal Courts, and Courts-martial also, except Courts-martial assembled under the Army Act (*u*), are now guided throughout British India. Before

(*t*) These Provincial Courts are constituted in Bengal and in the Provinces subject to the Allahabad High Court by Indian Act XII. of 1887; in the

Madras Presidency by Act III. of 1873; and in the Bombay Presidency by Act XIV. of 1869.

(*u*) See 44 & 45 Vict. c. 58, s. 127.

it came into force on September 1st, 1872, the decisions of the English Courts on the Common Law of England in matters of evidence were generally followed. Acts of the Indian Legislature had indeed been passed by which certain portions of the English law, with or without modifications, were expressly introduced from time to time, but "no complete or systematic enactment on the subject had, up to 1872, found a place in the Indian Statute Book" (x). It is necessary here only to indicate the various topics dealt with by the Act of 1872. Sect. 2 repeals all rules of evidence not contained in any Statute, Act, or Regulation in force in any part of British India. Any rules of the Hindu or Muhammadan law on the subject, which may have been enforced at any time, are thus superseded. In Part I., which relates generally to "the Relevancy of Facts," definitions are given of such words and expressions (among others) as "fact," "facts in issue," "relevant," "evidence," "proved," "disproved," "not proved," "may presume," and "shall presume"; and precise rules are framed as to the several kinds of materials on which judicial decisions may be based—such as evidence as to facts in issue and relevant facts, admissions and confessions, statements by persons who cannot be called as witnesses, judgments of Courts of justice, opinions of experts, and evidence as to character. Part II. of the Act comprises provisions as to the proof of facts by oral evidence, and the proof of the contents of documents by either primary or secondary evidence, and also as to public documents, presumptions as to documents, and the exclusion of oral by documentary evidence; while Part III. lays down rules as to the burden of proof, estoppel, the competency of witnesses, privileged communications, the evidence of accomplices, the examination of witnesses, and as to the power of a judge or a jury or of assessors to put questions. The last section of the Act gives effect to the principle, recognised by the Privy Council in *Lalla Bunseedhur v. The Government of Bengal* (y) and *Koowur Nitrasur v. Nund Loll* (z), that the improper admission or rejection of evidence by a Court is not ground of itself for a new trial or reversal of a decision, if the error has not led to a wrong decision,—that is, if it appears to the appellate Court that, independently of the evidence objected to and admitted, there

(x) Cunningham, "Law of Evidence," Introduction, para. 22.

(y) 14 Moore's Ind. Ap. Ca. 86.

(z) 8 *Ibid.*, 199.

was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

**Civil Procedure.**—The procedure of the Courts of Civil Judicature is regulated by the Code of Civil Procedure (Act XIV. of 1882 of the Government of India), which, with the exception of two sections applicable to the whole of British India, extends to the greater part of it, that is to the territories not included in the "Scheduled Districts," as defined in the Scheduled Districts Act (XIV. of 1874). The Code may be extended by a notification of the Local Government, with the sanction of the Government of India, to a scheduled district, and has been extended to most of such districts.

It recognises the division of British India into districts, in each of which there is a principal Civil Court of original jurisdiction, called a "District Court," which is generally also a Court of first appeal from the decisions of subordinate Courts. The local limits of the ordinary civil jurisdiction of a High Court constitute a district; and Courts of inferior grades, including Courts of small causes, are subordinate, for the purposes of the Code, to the High Courts and District Courts. No person is exempted, in any civil proceeding, by reason of his descent or place of birth, from the jurisdiction of the Courts, which, subject to the provisions of the Code, have jurisdiction to try all suits of a civil nature, their cognisance of which is not barred by any enactment for the time being in force.

The rule of *res judicata*, as applicable to civil proceedings, is laid down in s. 13 of the Code, and does not differ in any essential particular from so much of the rule in *The Duchess of Kingston's* case (*a*) as relates to judgments of Courts of concurrent jurisdiction. It adapts that rule to Indian conditions by obliterating the distinction between judgments pleaded in bar and judgments adduced in evidence (*b*), and it explains and elaborates some of the terms of the rule with the aid of later cases. It is wider than the provisions of the earlier Code of Civil Procedure (of 1859) on the same subject, but it is not an exhaustive statement of the law; and it is still permitted to the Courts to seek guidance, when necessary, from English decisions (*c*).

(a) 2 Smith's L. C. 813, 814.

(b) In British India the large power given to the Courts of raising the true issues between the parties pre-

vents the question of pleading from having much importance: *Golap Chand v. Thakurani* (1878), I. L. R. 3 Calc. 314.

(c) See *Soojomanee Dayee v. Sud-*

The rule, as explained, illustrated, and expanded by judicial decisions in England and in India, may be thus summarised. A matter in issue may be *res judicata* in a suit, and also in an execution proceeding, whether it was formerly decided in a suit or an execution proceeding (*d*), if the decision,—whether on a question of fact or of mixed fact and law,—was one turning on the merits and determining a concrete jural relation between the parties to the former case, and not a decision on a pure point of law not embodied in the final determination (*e*). Such decision,—if still subsisting,—not having been appealed, or otherwise disturbed, or successfully impeached under s. 44 of the Indian Evidence Act, I. of 1872, (for want of competency of the Court which delivered it, or for fraud) (*f*),—may be used in a subsequent case, whether pleaded as a bar or adduced in evidence, (subject, however, if a foreign decision, to the special provisions of s. 14 of the Code), if (1) it was a decision on a matter directly and substantially, and not collaterally, or incidentally, or inferentially (except by necessary inference (*g*)) determined in the former case, whether such matter was (i.) alleged and controverted (*h*), or (ii.) alleged and admitted, expressly or by implication, or (iii.) omitted to be alleged, if forming a necessary ground of attack or defence (*i*); (2) if the same matter is directly and substantially in issue, in the subsequent case, between the parties to the former case, or their privies, or between parties who were represented in the former case in the sense contemplated in Explanation V. of s. 13 (*k*); (3) if the parties were litigating in the

danund Mohaputter (1873), 12 Beng. L. R. 304, 315; *Misir Raghobardial v. Sheo Baksh Singh* (1882), I. L. R. 9 Calc. 439; *Krishna Behari Roy v. Brojeswari Chowdrani* (1875), I. L. R. 2 Ind. Ap. 283; and *Naranji Bhikabhai v. Dipa Umed* (1878), I. L. R. 3 Bom. 3.

(*d*) See *Ram Kirpal v. Rup Kuari* (1883), L. R. 11 Ind. Ap. 37; *Mungal Pershad v. Grija Kant* (1881), L. R. 8 Ind. Ap. 123; *Munjanath v. Venkatesh* (1881), I. L. R. 6 Bom. 54; and *Nimba v. Sitaram* (1885), I. L. R. 9 Bom. 458.

(*e*) See *Hitchin v. Campbell* (1771), 2 Bla. 827; *Cleve v. Powel* (1832), 1 M. & Rob. 228; *Parthasaradi v. Chinnakrishna* (1882), I. L. R. 5 Mad.

304; and *Ramasami v. Virasami* (1867), 3 Mad. H. C. R. 272, 279.

(*f*) See *Shedden v. Patrick* (1854), 1 Macqueen 535; *Girdlestone v. Brighton Aquarium Co.* (1879), 4 Ex. D. 107; and *Ahmedbhoy v. Vulleebhoy* (1882), I. L. R. 6 Bom. 703.

(*g*) Cf. *Barrs v. Jackson* (1842), 1 Y. & C. C. C. 585; 1 Phillips, 582.

(*h*) *Langmead v. Maple* (1865), 18 C. B., N. S. 255.

(*i*) See *Ellis v. McHenry* (1871), L. R. 6 C. P. 228; and *Hasam Ibrahim v. Mancharam Kaliandas* (1878), I. L. R. 3 Bom. 137.

(*k*) Buller, "Nisi Prius," p. 233. See also *Locke v. Norborne* (1691), 3 Mod.

former case in the same capacities as in the subsequent case, whether they were similarly ranged, as regards the point in dispute, as plaintiffs and defendants in the two cases or not (*l*); (4) if the decision was made by a Court having co-equal jurisdiction with the Court trying the subsequent case, both as regards the pecuniary limit of its jurisdiction and as to the subject-matter of the case, to try it with conclusive effect (*m*); and (5) if the matter was heard and finally decided (*n*) by such Court,—the decision being one tending to and forming a necessary element of the decree, whether it was expressly set out therein or not, and being unalterable by such Court, except on review.

The rule may be stated still more concisely in the following terms:—An adjudication, to be *res judicata*, must be "*secundum allegata et probata*," and, when it conforms to this principle, its objective elements, as embodied in the final concrete command, will form a conclusive bond of relation between the parties. The means or process by which it is arrived at may be erroneous; as, for instance, when the decision turns on the truth of a certain deposition or the construction of a certain law, the evidence may have been appreciated wrongly, or the law misapplied. In another case the same evidence may be weighed differently and the same law interpreted otherwise; but the individual constitution of a right and duty, derived from such materials, as ascertained by a Judge exercising final jurisdiction, will practically create and settle the precise relation as found and laid down by him. Though the abstract subjective view may be questioned, the concrete objective command must thereafter, in any further litigation, be accepted as final by the parties and their privies and all persons represented by the parties.

The provisions of s. 14 of the Code constitute an exception to

141; *Rex v. Hebden* (1738), Andr. 389; *Blakemore v. Glamorganshire Canal Co.* (1835), 2 C. M. & R. 133; and *Jogendro v. Funindro* (1871), 14 Moore's Ind. Ap. Ca. 376.

(*l*) Taylor, "Law of Evidence," para. 1510. See also *Cottingham v. Earl of Shrewsbury* (1843), 3 Hare, 627; *Ramchandra v. Narayan* (1886), I. L. R. 11 Bom. 216; and *Mohidin v. Muham-*

*mad* (1863), 1 Mad. H. C. R. 245.

(*m*) *Bababhat v. Narharbhat* (1888), I. L. R. 13 Bom. 224; and *Misir Ragho-bardial v. Sheo Baksh Singh* (1882), I. L. R. 9 Calc. 439.

(*n*) *Jenkins v. Robertson* (1867), L. R. 1 Sc. Ap. 117, 122; see also *Anu-suyabai v. Sakharam* (1883), I. L. R. 7 Bom. 464; and *Langmead v. Maple* (1865), 18 C. B., N. S. 255.



the general rule laid down in s. 13, and are applicable to foreign judgments which it is sought to use under s. 13, though a presumption is made in favour of jurisdiction in certain cases. A foreign judgment may be admissible as evidence under ss. 40 and 43 of the Evidence Act of 1872, as satisfying the conditions of s. 13 of the Code, but it cannot operate as a bar to a suit in British India unless it satisfies the conditions laid down in s. 14. By s. 5 of Act VII. of 1888 a paragraph is added to s. 14, relating to suits instituted in British India on the judgments of foreign Courts in Asia or Africa except Courts of Record established by Letters Patent or Supreme Consular Courts established by Orders in Council. In such cases the Court in which the suit is instituted is not precluded from inquiry into the merits of the case in which the judgment was passed.

The Code of 1882 provides that every suit shall be instituted in the Court of the lowest grade competent to try it, and then proceeds to give in detail the requisite directions as to all matters connected with the institution and trial of suits, the execution of decrees, and the prosecution of appeals from original decrees, of appeals to the High Courts from appellate decrees and of appeals to the Privy Council, and also as to the exercise by High Courts of their powers as Courts of Reference and Revision, and as to applications to any Court for a review of judgment. First appeals from Courts of first instance can be admitted, under s. 548 of the Code, on points of fact as well as points of law. The limitations to the powers of a High Court in a second appeal are contained in ss. 584 and 585, under which no appellant can be allowed, in a second appeal, to question the finding of the first appellate Court on a matter of fact (o).

**Civil Appeals to the Privy Council.**—Subject to such rules as may, from time to time, be made by the King in Council, appeals lie to the Privy Council under ss. 595 and 596 of the Code from any final original decree of a High Court or final appellate decree of a High Court or other Court of final appellate jurisdiction, if the amount or value of the subject-matter of the suit in the Court of first instance, and in dispute on appeal to the Privy Council, amounts to Rs. 10,000 or a larger sum, or if the decree involves some claim or question relating to property of like amount or value, and if, in cases where the decree appealed against was one

(o) See *Pertab Chunder v. Mohendra et al.* (1889), L. R. 16 Ind. Ap. 233.

confirming the decree of a Court immediately below it, some substantial question of law is involved (*p*). An appeal lies also to the Privy Council when the case is certified under s. 600 to be "otherwise a fit one" for appeal. Certain appeals are, however, expressly barred by s. 597. The procedure on application by petition to the Court whose decree is complained of for the admission of an appeal to the Privy Council is prescribed by ss. 598—607. By s. 612 the High Court (*q*) is empowered to make and publish rules consistent with the Code to regulate various matters connected with the enforcement of its provisions relating to such appeals. These provisions do not (as is further declared in s. 616) apply to any matter of criminal or admiralty or vice-admiralty jurisdiction, or to appeals from orders and decrees of Prize Courts. Moreover, nothing contained in the Code is to be understood as barring "the full and unqualified exercise" of His Majesty's pleasure in receiving or rejecting appeals, "or otherwise howsoever," or as interfering with any rules made by the Judicial Committee for the presentation of appeals to His Majesty in Council, or their conduct before the Judicial Committee.

**Criminal Procedure.**—The Code of Criminal Procedure (Act V. of 1898) extends to the whole of British India, but, in the absence of any specific provision to the contrary, nothing therein contained affects any special or local law already in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force; or applies to the Commissioners of Police in the three Presidency towns or to the police in Calcutta and Bombay, or to the heads of villages in the Madras Presidency, or to village police-officers in the Bombay Presidency.

Besides the High Courts and the Courts constituted under any law other than the Code for the time being in force, the following five classes of Courts are constituted thereunder:—(1) Courts of Session; (2) Presidency Magistrates; (3) Magistrates of the first class; (4) Magistrates of the second class; and (5) Magistrates of the third class. Every Province (excluding the Presidency towns)

(*p*) As to the scope of this provision, see *Moran et al. v. Mittu Bibee et al.* (1876), I. L. R. 2 Calc. 228.

(*q*) Sect. 3 (24) of the Indian General Clauses Act, X. of 1897, defines the expression "High Court," when used

with reference to civil proceedings, as meaning "the highest Civil Court of Appeal in the part of British India in which the Act or Regulation containing the expression operates."

is a Sessions Division or consists of Sessions Divisions, and, for the purposes of the Code, every Session Division is a District or consists of Districts. Every Presidency town is also a District for the purposes of the Code. The Local Governments can alter the limits of Divisions and Districts, and, with the previous sanction of the Government of India, the number of Divisions and Districts, and also, outside the Presidency towns, divide a District into Sub-divisions, or make any portion of a District a Sub-division, and alter the limits of Sub-divisions. They are also required to establish a Court of Session for every Sessions Division and to appoint Judges of such Courts, and a first-class Magistrate to be the District Magistrate in each District outside the Presidency towns, and they may appoint additional Sessions Judges and Assistant Sessions Judges and additional District Magistrates and as many persons as they think fit, besides the District Magistrates, to be Magistrates of the three classes. Any Magistrate of the first or second class may be placed in charge of a Sub-division. Special Magistrates and Benches of Magistrates may also be appointed.

Provision is also made for Presidency Magistrates in the Presidency towns, and the Government of India and each Local Government can appoint such European British subjects as they think fit to be Justices of the Peace for the whole or any part of British India outside the Presidency towns; and, so far as regards the three Presidency towns, the Local Governments of Bengal, Madras, and Bombay, can appoint any persons resident within British India, who are not the subjects of any foreign State, to be Justices of the Peace within the limits of their respective Presidency towns. Such persons do not, however, in their capacity as Justices of the Peace, exercise any magisterial powers.

The powers of the several classes of Courts as regards the offences cognisable by them, and the sentences which they may pass, are described in Chapter III. of the Code. Chapters IV. to VII. contain general provisions as to the aid and information to be given by the public generally, and by village headmen and others, to the Magistrates, the police, and other persons making arrests, also as to the manner of making arrests, and other matters connected therewith, and as to processes for compelling appearance or the production of documents and other movable property, and for the discovery of persons wrongfully confined. Chapters VIII. to XIII. provide for the

prevention of offences and the settlement of disputes as to possession. Chapter XIV. relates to investigations by the police, and contains in s. 164—which is to be read with s. 364 in Chapter XXV.—an important provision empowering any Magistrate, not being a police-officer, to record any statement or confession made to him in the course of an investigation under Chapter XIV. or at any time afterwards before the commencement of the judicial inquiry or trial, and to forward it to the Magistrate by whom the case is to be inquired into or tried. No Magistrate can, however, record a confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily. Under ss. 25 and 27 of the Indian Evidence Act, I. of 1872, a police-officer cannot, as in England, give evidence as to any confession made to him by an accused person in his custody, except in so far as it relates distinctly to any fact discovered thereby. If the accused person is disposed, during an investigation by the police, to make any statement of his own free will, the duty of the officer is to take him at once to the nearest Magistrate, in order that his statement, whether amounting to a confession or not, may be duly recorded in the manner provided by s. 164 of the Code (*r*). Chapters XV. to XXVIII. relate to the jurisdiction and proceedings of the several classes of Courts in inquiries and trials, and all matters subsidiary thereto, and Chapter XXIX. empowers the Government of India and the Local Governments to suspend, remit, or commute sentences, without interfering, however, with the right of His Majesty to grant pardons, reprieves, respites or remissions of punishments.

Chapter XXX. prescribes the rule as to *res judicata* in criminal matters; and, in reference to this chapter, it may be noted that the Courts of British India, when dealing with a plea of *autrefois acquit* or *autrefois convict*, have regard rather to the substance, validity and effect, than to the form, of judicial orders. No such plea is admissible unless the former proceeding was a regular trial, and not merely a preliminary inquiry or an *ex parte* proceeding not resulting in a trial. It must have been a trial resulting in a judgment of conviction or acquittal, and it

(*r*) For a "comparison" of "English and Anglo-Indian Criminal Procedure," see the paper read by Sir John Scott before the Society of Arts

on May 24th, 1900, and the discussion thereon, in the "Journal of the Society of Arts," vol. 48, pp. 637—657.

must have been conducted by a Court having jurisdiction to try the offence in respect of which a conviction or acquittal was recorded. The conviction or acquittal must also be in force when pleaded. If the plea be good at all, it covers, not only the particular offence adjudicated on at the former trial, but also the several different but allied offences constituted by the acts under adjudication, even though all those offences may not have been formally included in the charge; but it does not extend to distinct offences constituted by other connected acts and circumstances which were not dealt with at the former trial, though they might legally have been made grounds of charge therein; nor does it extend to convictions in cases where the nature of the offence becomes altered by reason of certain consequences caused thereby which had not happened when the accused person was first tried, or were not then known to the Court. Nor, again, can a previous acquittal or conviction be pleaded on a prosecution for an offence beyond the jurisdiction of the Court which first tried the offender. The law, as it stands, will protect an accused person from being unjustly harassed in respect of criminal charges which have already in effect been finally dealt with by a competent tribunal, while it is so framed as to permit further proceedings, in the interests of justice, in cases where the former trial was defective, either because it did not embrace all the facts or because it was conducted without jurisdiction. The law gives due effect, therefore, with requisite limitations, to the maxim, "*Nemo debet bis vexari pro eâdem causâ.*" It is substantially the same as the law of England.

Chapter XXXI. of the Code of Criminal Procedure deals with appeals from the judgments and orders of Criminal Courts, including appeals presented by the Public Prosecutor from an original or appellate order of acquittal passed by any Court other than a High Court. Appeals of this kind are unknown to the English law. In British India the only tribunals competent to hear them are the High Courts (s); and the Public Prosecutor

(s) The expression "High Court," as used in the Code of Criminal Procedure, means, in reference to proceedings against European British subjects, or persons jointly tried with them, the High Courts at Fort William, Madras, Bombay, and Allahabad, and

the Chief Courts of the Punjab and Lower Burma. In other cases it means the highest Court of Criminal Appeal or revision for any local area; or, where no such Court is established under any law, such officer as the Government of India may appoint in

cannot present them except under the direction of a Local Government. Such appeals must be made within six months from the date of the order of acquittal. In British India a criminal appeal (in any appealable case) may lie on a matter of fact as well as on a matter of law, except where the trial was by jury, in which case the appeal lies on a matter of law only. For the purposes of this provision the alleged severity of a sentence is deemed to be a matter of law. Chapter XXXII. of the Code provides for references to the High Courts by the Presidency Magistrates, and describes their revisional powers in respect of cases called for, or reported for orders, or otherwise coming to their knowledge. It also describes the powers of the High Courts, Sessions Judges, District Magistrates, and specially empowered Sub-divisional Magistrates, to call for the records of inferior Courts, and specifies the orders which those Courts can respectively make in such cases. The Code then provides for special proceedings as regards (1) Europeans and Americans criminally proceeded against; (2) Accused persons who are lunatics; (3) Certain offences affecting the administration of justice; (4) The maintenance of wives and children; and (5) Directions by the High Courts of the nature of a *habeas corpus*. The remainder of the Code contains certain supplementary provisions as regards Public Prosecutors, the taking of bail, the issue of commissions for the examination of witnesses, special rules of evidence in criminal cases, the personal disqualification of Judges and Magistrates for dealing with certain cases, the treatment of first offenders, and various other matters. An important and most useful part of the Code is its Second Schedule, which shows, in a detailed tabular form, in respect of offences against the Indian Penal Code and other laws: (1) Whether the police may arrest for each of the offences specified without a warrant or not; (2) Whether a warrant or a summons should ordinarily issue in the first instance; (3) Whether the offence is bailable or not; (4) Whether it is compoundable or not; (5) What the punishment is; and (6) By what Court it is triable.

**Criminal Appeals to the Privy Council.**—Under s. 41 of the

this behalf. See s. 4 (j) of the Code, as amended by the Lower Burma Courts Act, VI. of 1900. See also note 2 to s. 4 (j), and note 1 to s. 436,

in the edition of the Code issued by the Legislative Department of the Government of India: Calcutta, 1903.

Letters Patent of the High Courts at the three Presidency towns, and under s. 92 of the Letters Patent of the High Court for the North-Western Provinces (now known as the United Provinces), an appeal lies to the Privy Council from any judgment, order, or sentence of any one of those Courts, made in the exercise of original criminal jurisdiction, or in any criminal case where a point of law has been reserved for the opinion of such High Court, by any Court which has exercised original jurisdiction therein, provided that such High Court declares that the case is a fit one for appeal. Such appeal must be made under such conditions as the High Court may establish or require, and is subject to such rules and orders as the King in Council may make. The High Courts have no power to grant leave to aggrieved persons to appeal to the Privy Council against decisions of the inferior Courts or against decisions of the High Courts on appeal against such decisions. In all these cases, and in cases where leave to appeal has been refused by a High Court, a special application for leave to appeal must be made to the Judicial Committee (*t*). No such application would apparently be granted except where some clear departure from the requirements of justice was alleged to have taken place (*u*); nor unless it were shown that, by a disregard of the forms of legal process, or by some violation of the principles of natural justice, or otherwise, substantial and grave injustice had been done (*x*). Where the grounds suggested for an appeal raise, if true, "questions of great importance, and likely to occur often, and also where, if true, they show the due and orderly administration of the law interrupted, or diverted into a new course, which might create a precedent for the future, and also where there is no other means of preventing these consequences, then it would be proper for this Committee to entertain an appeal, if referred to for its decision" (*y*).

**Powers of Superintendence exercised by the High Courts.**—It remains only to notice, in connection with the matters dealt with in this Chapter, that, as pointed out in Sir James Stephen's "History of the Criminal Law of England" (*z*), the High Courts in India

(*t*) Mayne, "Criminal Law of India," para. 819.

(*u*) *Riel v. The Queen* (1885), L. R. 10 Ap. Ca. 675.

(*x*) *In re A. M. Dillet* (1887), L. R. 12 Ap. Ca. 459.

(*y*) *Reg. v. Bertrand* (1867), L. R. 1 P. C. at p. 530.

(*z*) Stephen, "History of the Criminal Law of England," vol. iii., p. 327.

exercise functions in the administration of both civil and criminal justice to which there is nothing analogous in England. Besides the powers of appeal and reference and revision, those Courts have the power of general superintendence and inspection over the Inferior Courts "which is possessed by no authority in England over any Court whatever." . . . "The check on judicial neglect or misbehaviour which is secured in England by the interest taken by the public in the administration of justice and by the comments of the Press is supplied in India partly by the power of appeal in the hands of the parties and partly by the power of revision vested in the High Courts."



## CHAPTER IV.

### EASTERN POSSESSIONS.

**ADEN.**—The London East India Company first sent a ship to Aden in 1609, and nine years later established a factory. A treaty was concluded with the ruler in 1802 (*a*). In 1838 arrangements were sought with the Sultan for the transfer of the peninsula to Great Britain (*b*); but an attack was made on the British Agent, so that the Government of Bombay had recourse to force. In 1850 Aden was declared a free port (*c*). In 1854 the Kuria Muria Islands were ceded by the Sultan of Muscat, and several other additions have been made from time to time to the territory. For legal purposes Aden is a part of the Presidency of Bombay (*cc*). The administration of justice is vested in the Resident and his assistants under an Act of the Bombay Legislature passed in 1864 (*d*), and is in accordance with the Indian Codes. An appeal lies to the Privy Council (*dd*). The island of Socotra was placed under British protection exercised by the Resident at Aden by agreement with the Sultan in October, 1886 (*e*).

**CEYLON: Political History.**—Both the Maritime Provinces and the kingdom of Kandy were acquired by cession.

The Maritime Provinces, which had been governed by Holland since 1658, were occupied by the British in 1796 (*f*), and were eventually ceded to them by the Dutch at the Peace of Amiens in 1802. A Proclamation dated September 23rd, 1799 enacted that "the administration of justice and police . . . should be thenceforth . . . exercised by all Courts . . . according to the laws and institutions that subsisted under the ancient Government of the United Provinces, subject to such deviations and alterations" as

(*a*) Lucas, "Hist. Geog. Brit. Cols." i., p. 75. status of the Resident's Court, see Table of Appeals, *infra*, p. 381.

(*b*) Hertslet's "Treaties," vol. xi., p. i.

(*c*) Indian Act, No. 10 of 1850.

(*cc*) See Table of Appeals, p. 360.

(*d*) No. 2 of 1864.

(*dd*) For conditions of appeal and

(*e*) Hertslet's "Treaties," xviii., p. 81.

(*f*) "Ann. Reg.," 1796, p. 75; Lucas, "Hist. Geog. Brit. Cols.," i., p. 95. See pp. 108, 112.

might be "by lawful authority ordained and published." The Roman Dutch law in force in the Maritime Provinces has thus (*g*) been maintained there, and it has been extended in some respects to the Kandyan territories.

The Kandyan territory was ceded by a Convention of March 2nd, 1815, when the British authorities guaranteed to "all classes of the people the safety of their persons and property, with their civil rights and immunities, according to the laws, institutions and customs established and in force amongst them."

**Law in Force.**—The following systems of municipal law are in force in Ceylon:—

1. The Roman-Dutch law, modified by local enactments, some of which have introduced specific portions of English law (*h*), and by judicial decisions following in certain cases rules of English law and equity, forms the law of the Maritime Provinces, and extends to every inhabitant of the island, except in those cases (see 2, 3, 4) where a personal law applies (*i*).

2. The Thesawalemai, or customs of the Malabar inhabitants of the Northern Province (*j*). If the Thesawalemai is silent, recourse is had to the Roman-Dutch law (*k*).

3. Laws and usages of Mussulmans (*l*).

4. Kandyan law. When Kandyan law is silent Roman-Dutch law applies (*m*).

The "Mukkuva Law," regulating succession to intestate property by Mukkuvars of Batticaloa, has apparently been swept away by Ordinance 15 of 1876.

There is a Penal Code (*n*), based on the Indian Penal Code, and the laws of Civil (*o*) and Criminal (*p*) Procedure and of evidence (*q*)

(*g*) See Ordinance No. 5 of 1835.

(*h*) See, for instance, No. 5 of 1852 (maritime matters); No. 22 of 1866 (commercial matters).

(*i*) As to the extent to which Roman-Dutch law has been adopted in the Colony, see the judgment of the Supreme Court in *Karonchihamy v. Angohamy* (1904), 8 N. L. R. 1.

(*j*) Rev. Legislative Enactments (1900), vol. i. The text set out in the Revised Laws is the sole recognised official repository of the Thesawalamai:

*Sabapathi v. Svapra Kasam* (1904), 8 N. L. R. 62. See further, as to application of Roman-Dutch law, *supra*, pp. 108-112.

(*k*) *Cl. Puthatampy v. Mailvo Kanam* (1897), 3 N. L. R. 42.

(*l*) Code, August 5th, 1806; Rev. Laws, vol. 1.

(*m*) Ord. 5 of 1852, s. 5.

(*n*) No. 2 of 1883.

(*o*) No. 2 of 1889.

(*p*) No. 15 of 1898.

(*q*) No. 14 of 1895.

have also been codified (*r*) after the Indian models. Civil and Criminal Jurisdiction are grouped together in the Ordinance (*s*) dealing with Courts and their powers, and this arrangement may conveniently be followed here.

1. **The Supreme Court**, the only Superior Court of Record in the island, consisting of a Chief Justice and three Puisne Judges (*t*), has—(i.) *original criminal jurisdiction* over all crimes and offences committed throughout the island (*u*), exercised at Criminal Sessions (*x*), held on different circuits (*y*); (ii.) an *appellate jurisdiction* (usually exercised only at Colombo) (*z*), for correction of errors committed by Inferior Courts, and sole and exclusive cognisance by way of appeal and revision of all causes, suits, &c., of which such Inferior Courts may have taken cognisance (*a*); and (iii.) *admiralty jurisdiction* (*b*). The Supreme Court has power to grant injunctions, writs of *habeas corpus*, prohibition, mandamus (*c*), and has further general powers of an ordinary character, such as to inspect records, frame rules, &c. (*d*). An appeal lies to the Privy Council from final judgments for sums, &c., above Rs. 5,000 (*e*). Cases, in which it is intended to appeal to the Privy Council, are heard, after the original judgment on appeal, in review by three Judges (*f*). The prerogative right of the King in Council to grant special leave is preserved (*g*).

2. **District Courts** in each district (*h*) are Courts of Record with original jurisdiction in all civil, revenue, matrimonial (*i*), and insolvency cases, and matters not exclusively assigned to the original jurisdiction of the Supreme Court, also jurisdiction over lunatics, minors and trusts (*k*). Testamentary jurisdiction is given to

- (*r*) No. 2 of 1889.
- (*s*) No. 1 of 1889.
- (*t*) Ordinance No. 1 of 1889, ss. 7, 8, as re-enacted by No. 24 of 1901, s. 5.
- (*u*) *Ibid.*, s. 21 (1).
- (*x*) *Ibid.*, s. 27.
- (*y*) *Ibid.*, s. 28.
- (*z*) *Ibid.*, s. 39.
- (*a*) *Ibid.*, s. 21 (2).
- (*b*) No. 2 of 1891, ss. 753 *et seq.*
- (*c*) No. 1 of 1889, s. 22; Charter of Justice, 1833, s. 36.
- (*d*) *Ibid.*, ss. 46—54.
- (*e*) Charter of Justice, February 18th, 1833; Clark, "Colonial Law,"

544; No. 1 of 1889, ss. 42—45; No. 2 of 1889, ss. 779—790; Stat. R. & O. Rev., 1904, vol. i., "Ceylon," p. 3. As to appeals to Supreme Court from District Courts and Police Courts, see Crim. Proc. Code, No. 15 of 1898, ss. 332 *et seq.*

(*f*) No. 1 of 1889, s. 42; No. 24 of 1901, s. 10.

(*g*) No. 15 of 1898, s. 333.

(*h*) No. 1 of 1889, s. 55.

(*i*) But see *Le Mesurier v. Le Mesurier* [1895] App. Cas. 517; 72 L. T. 873.

(*k*) No. 1 of 1889, s. 64.

District Courts over the estates of persons dying within the district. When a person dies out of the island the Supreme Court has power to confer sole testamentary jurisdiction on a District Court where the estate can be most conveniently administered. Every District Court has civil jurisdiction over all pleas where the defendants are resident in its district, or the land is situate, or the cause of action wholly or partly arose, there (*l*). An appeal lies to the Supreme Court (*m*). The District Courts have no original criminal jurisdiction (*n*). They try offences on commitment from the Police Courts, or on transfer from some other Court by order of the Supreme Court, and can punish up to two years' imprisonment and Rs. 1,000 fine (*o*), with an appeal to the Supreme Court (*p*).

3. **Courts of Request** in each division under Commissioners of Requests (*q*) are Courts of Record, and have original jurisdiction in actions of debt, partition, where the defendant or land is within the division, up to Rs. 300, but with no jurisdiction over actions for criminal conversation, seduction, breach of promise, separation, divorce, or nullity of marriage (*r*). These Courts have also unlimited jurisdiction in claims for the recovery of wages (*s*).

4. **Police Courts** in each division under Police Magistrates (*t*), with duties prescribed by the Criminal Procedure Code (*u*). Their jurisdiction is limited to six months' imprisonment and Rs. 100 fine, with an appeal, in certain cases, to the Supreme Court.

5. **Village Tribunals**—a jurisdiction affiliated to village councils, and intended to be on the lines of the Sinhalese Ghanasabhawa and the Indian Panchayet—have been established by the Governor, with the advice of the Executive Council, in the chief headmen's divisions (*x*).

**HONG KONG** (*y*): **Political History**.—The island of Hong Kong was ceded to England in January, 1841, by the Chinese Commissioner Keshen, and the cession, although repudiated at the time by the Chinese Government, was confirmed and made absolute by the

(*l*) No. 1 of 1889, s. 65. See, further, as to revenue jurisdiction, s. 68; as to testamentary jurisdiction, ss. 69, 70; as to lunacy jurisdiction, &c., s. 71.

(*m*) *Ibid.*, s. 75.

(*n*) No. 15 of 1898, s. 12.

(*o*) *Ibid.*, s. 14.

(*p*) *Ibid.*, s. 338.

(*q*) No. 1 of 1889, s. 55.

(*r*) *Ibid.*, s. 77.

(*s*) *Ibid.*, s. 78.

(*t*) No. 1 of 1889, s. 55.

(*u*) No. 15 of 1898; and see ss. 9, 11 (*b*).

(*x*) No. 24 of 1889, art. 26.

(*y*) Kindly revised by Sir W. N. Goodman, formerly Chief Justice of Hong Kong.

Treaty of Nankin in August, 1842, by which also the ports of Canton, Amoy, Foochow, Ningpo, and Shanghai were thrown open to British commerce (z). Hong Kong was constituted a Crown Colony in 1848. The promontory of Kowloon, opposite the northern side of the harbour of the island, was ceded to Britain in 1860 by the Convention of Peking (zz).

In 1898 a large tract of the mainland behind the promontory, extending to 222½ square miles, and including the waters of Mirs Bay and Deep Bay, and practically all the islands adjacent to Hong Kong, was leased from the Emperor of China for ninety-nine years (a). By the Order in Council, October 20th, 1898 (b), the "New Territories" were declared to be part and parcel of the Colony in like manner and for all intents and purposes as if they had originally formed part of Hong Kong, all laws then in force being extended to them (c). The city of Kowloon was excluded from this Order, but, owing to subsequent difficulties, the city was by Order in Council, December 27th, 1899 (d), included in it, and made part of the New Territories.

**Law in Force in Hong Kong.**—The law in force in Hong Kong consists of—(1) the common law of England as it existed when the Colony obtained a Legislature, viz., on April 5th, 1848, except so far as that law is inapplicable to the local circumstances of the Colony or of its inhabitants (e) ; and (2) statute law.

Certain Ordinances apply exclusively to Chinese, *e.g.*, No. 1 of 1851, which limits the right of Chinese to sue their fellow-subjects in the Hong Kong Courts, where the cause of action has arisen out of the Colony, unless the defendant has been resident in the Colony for six consecutive months prior to the commencement of the action; and No. 1 of 1856, which provides that wills made by Chinese, whether natives of or domiciled in Hong Kong or China, if proved to have been made or acknowledged and authenticated

(z) See Lucas, "Hist. Geog. Brit. Cols.," i., pp. 132 *et seq.*, where the early European relations with China are also clearly sketched, and Norton-Kyshe, "History of the Laws and Courts of Hong Kong," for a detailed account of the foundation of the Colony.

(zz) Hertslet's "Treaties," xi., p. 113.

(a) Convention, June 9th, 1899. Hertslet's "Treaties," xxi., p. 293.

(b) Stat. R. & O. Rev. 1904, vol. vi., "Hong Kong," p. 5.

(c) By Ordinance No. 6 of 1899 the New Territories were exempted from the operation of several important Ordinances specified in the schedule.

(d) Stat. R. & O. Rev. 1904, vol. vi., "Hong Kong," p. 6.

(e) Supreme Court Ordinance, 1893, s. 5.

in accordance with Chinese laws and usages, so as to be effectual for the transmission of property according to such laws and usages, are rendered valid.

In addition to the ordinary extradition law, there are special Ordinances enabling fugitives from justice to be extradited to Macao (No. 1 of 1881); to China, in the case of subjects of China (No. 7 of 1889); and to North Borneo (No. 1 of 1896). These Ordinances in all essential particulars are based upon the Extradition Act of the United Kingdom.

**Supreme Court.**—The Supreme Court consists of a Chief Justice and one Puisne Judge (*f*). It has the jurisdiction of the English Courts of common law (*g*) and equity (*h*), and possesses probate jurisdiction under Ordinance No. 2 of 1897. All suits are heard in the first instance by either of the two Judges sitting alone, unless the Chief Justice thinks a trial before the Full Court desirable (*i*). An appeal lies as of right from every civil decision of either Judge, and from the Police Magistrates' Court to the Full Court (*j*), and thence to the Privy Council where the sum at stake exceeds £500 (*k*). The law as to civil procedure in the Colony has been codified (*l*). It is based partly on English and partly on Indian practice with some local modifications. Under the Wei-hai-wei Order in Council of July 24th, 1901 (*m*), an appeal now lies to the Supreme Court of Hong Kong from the Commissioner sitting as the High Court of Wei-hai-wei.

The Supreme Court may take cognisance of offences by British subjects within Macao, and of suits originating there, when the accused or the defendant is found within its jurisdiction, but has no power to issue warrants or writs to be executed or served within Macao (*n*). Otherwise the Supreme Court of Hong Kong has no jurisdiction under the China Order in Council, 1865 (*o*).

(*f*) No. 3 of 1873, s. 9.

(*g*) *Ibid.*, s. 7.

(*h*) *Ibid.*, s. 8. Ordinance No. 2 of 1901, re-enacting ss. 24 and 25 of the English Judicature Act, 1873, fuses the legal and equitable powers of the Supreme Court.

(*i*) *Ibid.*, s. 22.

(*j*) *Ibid.*, s. 23.

(*k*) Instructions of January 21st, 1846. Stat. R. & O. Rev. 1904,

vol. vi., "Judicial Committee," p. 35.

(*l*) See No. 3 of 1901 in "Revised Ordinances of Hong Kong, 1904."

(*m*) Stat. R. & O. Rev. 1904, vol. v., "Foreign Jurisdiction," p. 283.

(*n*) China Order in Council of March 9th, 1865, s. 159. Stat. R. & O. Rev. 1904, vol. vi., "Foreign Jurisdiction," p. 243.

(*o*) *Ibid.*, s. 160.

The Puisne Judge sits as a Court of summary jurisdiction at law and in equity up to 1,000 dollars (*p*).

The Criminal Law Amendment Acts of the United Kingdom (24 & 25 Vict. cc. 96 to 100) have been adopted by Ordinances Nos. 2 to 7 of 1885. The Full Court was constituted a Court of Appeal in Criminal Cases by No. 9 of 1899, s. 78.

As to its Admiralty jurisdiction, see the Colonial Courts of Admiralty Act, 1890, the English procedure being adopted by Ordinance No. 6 of 1896.

The Police Magistrates' Court is a Court of limited criminal jurisdiction, from which an appeal lies to the Full Court (*q*).

A Land Court, consisting of a President and one other member, both appointed by the Governor, has been constituted to determine claims to land arising out of the acquisition of the "New Territories" above referred to (*r*). The transfer of land in the new territories is dealt with under Ordinances Nos. 8 and 9 of 1905.

**STRAITS SETTLEMENTS: Political History.**—The Colony of the Straits Settlements comprises Penang, formerly named Prince of Wales Island, Province Wellesley, a strip of territory on the opposite mainland, Malacca, and Singapore. Closely associated with it are the Federated Malay States. Penang was ceded to the East India Company in 1786 by the Rajah of Kedah. Province Wellesley was bought from the Rajah in 1800, with a view to extirpating the pirates who infested the coast, and to obtaining command of both sides of the harbour. Malacca, in 1795 taken from, and in 1818 restored to, the Dutch, was finally acquired by Great Britain under a Treaty of March 17th, 1824, in exchange for a surrender of the East India Company's settlement at Bencoolen, on the west coast of Sumatra. By that treaty it was agreed that the Dutch should leave the Malay Peninsula, the British undertaking at the same time to leave Sumatra to the Dutch. Singapore, occupied by Sir Stamford Raffles in 1819, was formally ceded, with its seas and islets, by treaty with the Sultan of Johore in 1824. In 1826 the three settlements were incorporated in one government, under Penang, which had been constituted a separate Presidency in 1805. In 1837 the seat of government was moved to Singapore. In

(*p*) No. 4 of 1873.

(*r*) Revised Ordinance No. 4 of

(*q*) Revised Ordinance No. 3 of 1900.  
1890.

1867 the Straits Settlements were severed from India, and made a separate Crown Colony (s). Cocos Islands, which were taken possession of by the British in 1857, were made subject to the Government of Ceylon by Letters Patent dated September 10th, 1878, and were included in the Straits Settlements by Order in Council dated May 20th, 1903 (t). Christmas Island, by Letters Patent dated January 8th, 1889 was placed under the administration of the Governor of the same Colony, and was formally annexed to it in 1900 (tt). The Straits Settlements now include Labuan; the Governor is High Commissioner for the protected State of Brunei (u).

The first Charter relating to the Straits Settlements was that granted by George III. in 1807, to the East India Company, for the administration of Prince of Wales Island, and a tract of country in the peninsula of Malacca which the Company had obtained by cession from a native prince. According to the Charter, at the date of the cession, the island was wholly uninhabited, but the company had since built a fort and a town, and "many of our subjects and many Chinese, Malays, Indians and other persons professing different religions, and using and having different manners, habits, customs, and persuasions had settled there." The Charter established a Court of Judicature, which was to exercise all the jurisdiction of the English Courts of law and Chancery, "as far as circumstances will admit." The Court was also to exercise jurisdiction as an Ecclesiastical Court, "so far as the several religions, manners, and customs of the inhabitants will admit." A new Charter was granted by George IV. in 1826 (x), when the island of Singapore and the town and fort of Malacca were annexed to Prince of Wales Island, which conferred in substance the same jurisdiction on the Court of Judicature as the former Charter had done. This Charter constitutes the authority for the introduction of the common law of England into the colony. The Charter does not expressly provide that the law of England shall be the law of the Settlements; but, a few years

(s) See Lucas, "Hist. Geog. Brit. Col.," i., pp. 192-195. Newbold, British Settlements in the Strait of Malacca," vol. i., pp. 123, 277, 399

(t) Stat. R. & O. Rev. 1904, vol. x

"Straits Settlements," pp. 2, 11.

(tt) *Ibid*, p. 4.

(u) See *infra*, pp. 194, 349.

(x) Letters Patent of November 27th, 1826.



after it came into operation, it was held (by Sir Benjamin Malkin) that "the introduction of the King's Charter had introduced the existing law of England also, and abrogated any law previously existing," and this principle has always been acted upon since, with the restriction referred to above respecting alien races (*y*). The last Charter granted to the East India Company, in the year 1855, again conferred the like powers on the Court, and this jurisdiction has not in its fundamental conditions been altered either by the Act (*z*) transferring the government of the Straits Settlements from the India to the Colonial Office, by the Order in Council of December 28th, 1866 (*a*), bringing that Act into operation, or by the ordinances on which the present constitution of the Supreme Court of the colony depends (*b*).

"Acts of Parliament, passed since that year, not being in force in [the] colony (unless made applicable or expressly adopted), and amendments of the common law effected in England, after 1826, have not, as a rule, taken effect in the Straits Settlements. But the law of England is subject, in its application to alien races established in these settlements, to such modifications as are necessary to prevent its operating unjustly or oppressively on them" (*c*).

Labuan was ceded to Great Britain by the Sultan of Borneo in 1846, and occupied in 1848. The law consists of the common law of England and of Ordinances made by the Governor, subject to the approval of the Colonial Office, under Letters Patent of November 6th, 1889 (*d*). Jurisdiction in Labuan was exercised by a General Court (*e*), and Ordinance No. 5 of 1894 provided for the appointment of an Emam to assist the Judge of the General Court in the settlement of disputes concerning marriage, divorce, and probate matters between Muhammadans according to Muhammadan law and custom. By 29 & 30 Vict. c. 115, s. 3, the Crown was empowered to place the island under the Government of the Straits Settlements. The arrangement made in 1889, by which the Governor of the territory

(*y*) Note by Sir Lionel Cox, then Chief Justice of the Straits Settlements, in "Jour. Comp. Leg.," i., p. 184.

(*z*) 29 & 30 Vict. c. 115. See Neo v. Neo (1875), L. R. 6 P. C. at pp. 392, 393.

(*a*) Stat. R. & O. Rev., 1904, vol. xi., "Straits Settlements," p. 1.

(*b*) No. 3 of 1878, as amended by No. 15 of 1885.

(*c*) Choah Choon Nioh v. Spottiswoode. See note (*n*), *infra*, p. 196.

(*d*) Stat. R. & O. Rev., 1904, vol. vi., "Labuan," p. 1.

(*e*) Ordinance No. 2 of 1852; and see Ordinance No. 3 of 1865.

of the British North Borneo Company was Governor of Labuan, came to an end in 1905. From January 1st, 1906, the Governor of the Straits Settlements was commissioned as Governor of Labuan (*f*). By Letters Patent dated October 30th, 1906, the boundaries of the Straits Settlements were extended so as to include Labuan (*g*).

**Law in Force in Straits Settlements.**—The law in force in the Straits Settlements consists of :—(1) The common law of England as it stood in 1826 (*h*). (2) Special laws applicable to particular races and creeds—Hindoos, Christians, and Parsees. Reference may be made to the following : Indian Acts, No. XV. of 1856 (Marriage of Hindoo Widows), V. of 1865 (Marriage of Christians), XV. of 1865 (Marriage and Divorce of Parsees), XXI of 1865 (Intestate Succession of Parsees) : to this list may be added the Muhammadan Marriage Ordinance, 1880, amended by No. 34 of 1902. (3) Acts of the Governor-General in Council passed prior to April, 1867 (*i*), and not subsequently repealed. (4) Ordinances of the Legislative Council since April, 1867, when the Straits Settlements were detached from India and formed into a separate colony under 29 & 30 Vict. c. 115 (*k*).

Acts of the United Kingdom passed after 1826 do not apply to the Straits Settlements unless extended to it either expressly or by necessary implication. But, as in many other colonies, English legislation on certain important heads of law has been followed by the local Legislature (*l*), and the Civil Law Ordinance, 1878, contains a general provision that “ in all questions or issues which may hereafter arise, or which may have to be decided in this Colony with respect to the law of partnerships, joint-stock companies, corporations, banks and banking, principals and agents,

(*f*) Colonial Office List, 1906.

(*g*) *London Gazette*, Nov. 6th, 1906, p. 7477.

(*h*) *Neo v. Neo* (1875), L. R. 6 P. C. 381. It was pointed out by the Privy Council in this case (at p. 392) that as there is no trace of any laws having been established there before it was acquired by the East India Company, it was immaterial whether Penang should be regarded as ceded or newly-settled territory ; in either case, the

law of England, so far as it was applicable, must be taken to be the governing law.

(*i*) These Acts have been collected and published separately by authority

(*k*) “ *Jour. Comp. Leg.*,” i., p. 185.

(*l*) See, e.g., the Conveyancing Ordinance, 1886; the Bills of Sale Ordinance, 1886; the Bankruptcy Ordinance, 1888; the Married Women's Property Ordinance, 1902.

carriers by land and sea, marine insurance, average, life and fire insurance, and with respect to mercantile law generally, the law to be administered shall be the same as would be administered in England in the like case, at the corresponding period, as if such question had arisen or had to be decided in England, unless in any case other provision is or shall be made by any statute now in force in this Colony or hereafter to be enacted," with a special proviso exempting all matters connected with land (*m*).

With regard to statutes passed before 1826, "it has been held that the Charter of 1826 had the effect of introducing not only the common law, but also so much of the statute law then existing in England as is of general and not merely of local policy, and adapted to the conditions and wants of the inhabitants" (*n*).

**Supreme Court.**—The Supreme Court is held before the Chief Justice and three Puisne Judges (*o*). It is a Court of Record, and has the powers of the English High Court in all civil and criminal proceedings, other than Admiralty suits, and exercises control over all Inferior Courts (*p*). It also possesses jurisdiction in bankruptcy (*q*), as regards infants and lunatics (*r*), in matrimonial cases (*s*), and in probate and administrations (*t*). The Chief Justice ordinarily resides at Singapore, and the senior Puisne Judge at Penang (*u*). The Supreme Court is a Court of Appeal with jurisdiction to hear appeals from (1) any judgment or order (*x*)—other than orders by consent, or as to costs, or in small causes (without leave in each of these cases), or directing the issue of *habeas corpus* (*y*)—made by the Supreme Court or a Judge in the exercise of original civil jurisdiction; (2) by way of certiorari from the decisions of the Courts of Requests (*z*). An appeal lies to the Privy Council from final judgments of the Supreme Court involving a sum or value of 2,500 dollars (*a*).

**Criminal Jurisdiction.**—The criminal jurisdiction of the Courts of

(*m*) No. 4 of 1878, s. 6.

(*n*) Sir Lionel Cox's note, "Jour. Comp. Leg.," i., 184; and Sir P. Benson Maxwell's judgment in *Choah Choon Nioh v. Spottiswoode* (1869), Wood's *Oriental Cases*. S. C. Norton Kyshe's *Straits Settlements Reports*, i., 216.

(*o*) No. 3 of 1878, s. 2.

(*p*) *Ibid.*, s. 10.

(*q*) *Ibid.*, s. 11.

(*r*) *Ibid.*, s. 12.

(*s*) *Ibid.*, s. 13.

(*t*) *Ibid.*, ss. 14—16.

(*u*) Revised Ordinance, No. 3 of 1878, s. 9.

(*x*) No. 2 of 1893, s. 3.

(*y*) *Ibid.*, s. 18.

(*z*) No. 3 of 1893, s. 20.

(*a*) *Ibid.*, s. 22.

the Straits Settlements is now defined by Ordinance No. 21 of 1900 (*b*). In 1892 a Criminal Procedure Code (*c*), drafted by a Commission of which Sir Edward O'Malley, then Chief Justice, was chairman, was passed, but it was never brought into operation. The Criminal Procedure Ordinance of 1900 is based upon that of 1892. It follows, in its main lines, the Indian Code of Criminal Procedure (*d*). The criminal Courts constituted under it are :—

(I.) **Police Courts.**—Their powers are exercised by a single police magistrate appointed for the settlement within which the Police Court is constituted, express provision being made for the sitting being held in a Court-house in preliminary enquiries and summary trials. On a summary trial a Police Court has power to order imprisonment for a term not exceeding six months (*e*).

(II.) **Bench Courts.**—Their powers are exercised by two or more police magistrates for the settlement within which the Bench Court is constituted. Their power of imprisonment is limited to two years (*f*).

(III.) **Supreme Court.**—The jurisdiction of the Supreme Court is either for the trial of prisoners or appellate. All trials before the Supreme Court are to be by jury consisting of seven persons (*g*). A verdict need not be unanimous. If an accused person is not found guilty unanimously or by a majority of not less than five to two, he is entitled to be discharged (*h*). If he is found guilty unanimously, or by a majority of not less than five to two, in whose verdict the Judge concurs, judgment is entered accordingly (*i*). If the Judge does not concur in such a majority verdict, then a fresh trial is to proceed before another jury (*k*). Points of law may be reserved in case of convictions (*a*) by a Police or Bench Court, or (*b*) on a trial before the Supreme Court. In the former case the appeal may be heard by a single Judge; in the latter, provision is made that the Court shall consist of two or more Judges, and for a hearing before three Judges, if such two Judges differ (*l*). Appeals from convictions after trial by a Police Court, or a Bench Court, are of right, except

(*b*) See note by Mr. Walter J. Napier in "Jour. Comp. Leg." (N. S.), iii., p. 323.

(*c*) No. 7 of 1892.

(*d*) Act V. of 1898.

(*e*) No. 21 of 1900, ss. 6, 10, 13.

(*f*) *Ibid.*, ss. 6, 10, 13.

(*g*) *Ibid.*, ss. 183, 187.

(*h*) *Ibid.*, s. 215.

(*i*) *Ibid.*, s. 216.

(*k*) *Ibid.*, s. 217.

(*l*) *Ibid.*, ss. 309—311.

in certain trivial offences (*m*). In case of acquittals, appeals by the Public Prosecutor alone are permitted (*n*). The Supreme Court has also power to call for the records of Inferior Courts, and to revise their judgments and orders (*o*).

Under the Siam Order in Council of February 16th, 1903 (*p*), the Supreme Court exercises a defined extritorial jurisdiction, original and appellate, in Siam. Under the Brunei Order in Council, 1901, this Court has appellate and original jurisdiction in Brunei under certain conditions (*q*).

Assizes are held periodically at Singapore, Penang, and Malacca (*r*).

A Court of Requests is established at each of the settlements with petty debt jurisdiction up to 50 dollars; it is held by a magistrate as Commissioner (*s*).

**FEDERATED MALAY STATES.**—The native States of the Malay Peninsula are under British influence; and the Governments of the local princes are administered under the advice of the Resident Agents of the British Government (*t*).

Four of these States—Perak, Selangor, Negri Sembilan (which comprises Sungei Ujong) and Pahang—form a federation called the Federated Malay States. The government of each of these States is in the hands of a State Council, consisting of the Sultan, who is the head of the State, the Resident, the Secretary to the Resident in Perak and Selangor, and in Perak, Selangor, and Negri Sembilan certain Chinese and Malay members. In the Federated States a Resident-General has been appointed, under a treaty of 1895, to control the Residents appointed to each State, and to be the means of communication between the State Government and the High Commissioner, who is also the Governor of the Straits Settlements (*u*). By the desire of the Sultans and Chiefs of the Federated States jurisdiction was conferred upon the Privy Council by Order in Council of May 11th, 1906, to hear appeals from the Supreme Court (*x*).

(*m*) No. 21 of 1900, ss. 288, 293.

(*n*) *Ibid.*, s. 292.

(*o*) *Ibid.*, ss. 312—316.

(*p*) Stat. R. & O. Rev. 1904, vol. v., "Foreign Jurisdiction," at p. 693; and see *infra*, p. 347.

(*q*) See *infra*, p. 349, 374.

(*r*) No. 3 of 1878, ss. 28—31.

(*s*) *Ibid.*, ss. 1, 53, 54.

(*t*) Colonial Office List, "Federated Malay States."

(*u*) See Colonial Office List; Lucas "Hist. Geog.," i., pp. 196 *et seq.*

(*x*) *London Gazette*, May 15th, 1906, p. 3345.

**Courts.**—A similar system of Courts exists in each of the States by the authority of enactments passed in 1905 (*y*). The Supreme Court comprises the Court of a Judicial Commissioner and the Court of Appeal (*z*). The Court consists of a Chief Judicial Commissioner and two Judicial Commissioners (*a*), of whom any two form a Court of Appeal (*b*). The other Courts are Courts of Magistrates of the First and Second Class, the Courts of a Kathi and Assistant Kathi, and the Court of a Penghulu (*c*).

Johore is not included in the Federation, but by a treaty of December 11th, 1885, the Sultan placed his foreign relations in the hands of England, binding himself not to negotiate treaties or to enter into any engagement with any foreign State, and agreed to receive a British Agent (*d*).

**MAURITIUS.—Political History.**—The island of Mauritius, after having been successively used as a port of call by the Portuguese (*e*), and occupied by the Dutch (*f*), and the French (*g*), was ceded to England by a Capitulation, dated December 3rd, 1810 (*h*). The eighth article of this Capitulation expressly preserved to the inhabitants their religion, laws, and customs. Among the laws so preserved were the French Code Civil, Code of Civil Procedure, and Code of Commerce (*i*). The Capitulation of December 3rd,

(*y*) Perak Enactment No. 13 of 1905; Negri Sembilan Enactment No. 15 of 1905; Pahang Enactment No. 13 of 1905; Selangor Enactment No. 15 of 1905.

(*z*) *Ibid.*, s. 4.

(*a*) *Ibid.*, s. 6.

(*b*) *Ibid.*, s. 9.

(*c*) *Ibid.*, s. 4.

(*d*) See *Mighell v. Johore* (Sultan of) [1894] 1 Q. B. at p. 150; also *State Papers*, vol. lxxvi., p. 92; and *Ravena Mana Chena Allagappa Chitta v. Tunku Allum Bin Sultan Allie Iskander Shah* (1883) 8 A. C. 751.

(*e*) The Portuguese have left no traces of their occupation on the laws of the island. Réunion and Mauritius were discovered by the Portuguese sailor Mascarenhas in 1505.

(*f*) The remains of the Dutch settlement are to be found on the south-east coast of the island. Mauritius

was sighted by the Dutch in 1598, and occupied by them from 1644 to 1712.

(*g*) Possession was taken of Mauritius on behalf of the King of France in 1715. From 1721 to 1767 it belonged to the French East India Company, whose period of administration included the governorship (1735—1746) of the famous Labourdonnais. In 1767 it was transferred to the French Crown. From 1790 to 1803 it was under the administration of the Governor and Colonial Assembly. From 1803 to 1810 it was governed by General Decaen, Captain-General of the French Possessions East of the Cape, with whom were associated the Colonial Prefect and the Commissary of Justice. See, further, Lucas, "Hist. Geog.," i., pp. 134 *et seq.*

(*h*) Code Farquhar, No. 1; "Rev. Laws," iv., p. 1.

(*i*) See *supra*, p. 21.

1810, was confirmed by a Proclamation, dated December 5th in the same year (*k*) ; and, in that Proclamation, express provision was again made for the maintenance of the local law. A few weeks later (December 28th, 1810), a second Proclamation was issued (*l*), regulating the administration of justice in the colony, and impliedly accepting, as the basis on which the new system was to rest, the terms of the Capitulation of December 3rd, and the Proclamation of December 5th, 1810. So the position of matters remained till 1814, when the abdication of Napoleon and the restoration of the Bourbon monarchy rendered necessary a fresh readjustment of the political map. This was effected by the Treaty of Paris of May 30th, 1814 (*m*). By Article 8 of that Treaty the English King engaged to "restore" to the French monarch certain colonial possessions with the exception, *inter alia*, of the island of Mauritius, which the French King, on his side, ceded to England "in full right and sovereignty." The Treaty, however, was absolutely silent as to the Capitulation and the Proclamation of 1810, and contained no allusion to the preservation by these instruments of the laws in force in the Colony under the French *régime*. The conclusion of the Treaty of Paris was notified by a Proclamation of December 15th, 1814 (*n*). But the Treaty was never confirmed by any Imperial statute, nor do the French Codes derive their authority in Mauritius from any Imperial legislation (*o*).

**Law in Force.**—The legislation of Mauritius (*p*) is divisible into six periods.

(I.) From the earliest times to June, 1787, such of the early laws as were in force in 1766, and those passed between that year and 1787 were collected and published in the Code Delaleu, so called from the name of its compiler, a member of the Superior Council (*q*).

(*k*) Code Farquhar, No. 2; "Rev. Laws," iv., p. 5.

(*l*) Code Farquhar, No. 14; "Rev. Laws," iv., p. 5.

(*m*) Herts. vol. i., p. 251.

(*n*) "Rev. Laws," iv., p. 8.

(*o*) Colonial Government v. Laborde and others (1902), Dec. S. C. (1902), pp. 40, 41.

(*p*) See "Revised Laws of Mauritius," Preface to Edition of 1897.

(*q*) "The 'Superior Council' of Mauritius, composed of leading colonists with some knowledge of the laws, under the presidency of the Intendant, was entrusted with the administration of justice. Moreover, though forbidden to interfere directly or indirectly with the government of the island, it was required to register the regulations made by the Governor and Intendant, and was permitted to make representa-

(II.) From June, 1787 to September, 1803 — 1st Vendemiaire, Year XII. The laws promulgated in this period were first collected, and those then extant published, by Mr. Justice Rouillard in his edition of the laws published in 1866.

(III.) From 1st Vendemiaire, Year XII. to 1810, the date of the Capitulation : the administration of General Decaen. The laws of this period are collected in the Code Decaen.

(IV.) From 1810 to 1823, the Governorship of Sir Robert Farquhar.

(V.) From 1823 to December 1832, the Governorship of Sir Galbraith Lowry Cole. The laws of this period were collected and published in 1866.

(VI.) The sixth and last period is coincident with the establishment and work of the Council of Government, which was created by letters patent of June 20th, 1831 (r).

The French Civil, Civil Procedure, and Commercial Codes were promulgated in Mauritius, with modifications in detail, by the following *Arrêtés* :—Civil Code, *Arrêtés* of October 18th, 1805, art. 1 ; October 23rd, 1805, art. 1 ; April 21st, 1808, respectively Nos. 108, 109, and 168 of the Code Decaen ; Code of Civil Procedure, *Arrêtés* of July 20th, 1808, respectively Nos. 117 and 182 of Code Decaen ; Code of Commerce, *Arrêté* of July 14th, 1809, Code Decaen, No. 208.

The French Code d'Instruction Criminelle was never promulgated in Mauritius. Down to 1831, criminal procedure was regulated mainly by the French Ordinance of 1670 (s). In 1831, however, a Colonial Code d'Instruction Criminelle, framed on the model of the French Code, was enacted, but this Code was amended in various respects by local legislation, particularly by Ordinance 10 of 1850, which established trial by jury in Mauritius, and was virtually repealed by the Criminal Procedure Ordinance (No. 29 of

tions with regard to them to the Home Government" (Lucas, "Hist. Geog., 1906," i., 137 ; Bonnefoy, "Table Générale," p. 113, tit. "Conseil Supérieur.")

(r) As to the Council of Government, see now Letters Patent of September 16th, 1885 (Stat. R. & O. Rev., 1904, vol. viii., "Mauritius," p. 5). The laws of Mauritius generally were published in a revised form in 1897 under the editorship of Sir F. T. Piggoth, then

Procureur-General of the Colony, and now Chief Justice of Hong-Kong ; Mr., now Mr. Justice, Thibaud ; and Mr. F. A. Herchenroder, now Procureur - General of Mauritius. A second edition of this work was published in 1905.

(s) See Code Delaleu, No. 133 : *Arrêté* of Messidor 25, An XII., Code Decaen, No. 66 ; Colonial Government v. Laborde (1902), Dec. S. C. (Maur.) (1902), p. 69.



1853), which regulates criminal procedure in the island on English lines.

The French Penal Code of October 6th, 1791, was adopted for the Colony in 1793, by an *Arrêté* of August 7th in that year (*u*). It was partly repealed in general terms by art. 391 of the Penal Code of 1838 (No. 6 of 1838), and as to the rest has fallen into desuetude. The present Penal Code of Mauritius (Nos. 6 of 1838) was enacted first in 1832, but was disallowed (*x*). The Ordinance of 1838, art. 392, provided that it should remain in force for five years from the day of its publication, or until the pleasure of the sovereign should be known. It was not confirmed, but its operation was continued by Ordinances 12 of 1843, 37 of 1844, and 1 of 1845. Finally, Ordinance 24 of 1845, which was passed for maintaining and continuing it, was duly confirmed in 1846 (*y*). The Penal Code of 1838 is founded on the French Code Penal, and has a French and English text, in parallel columns. It has been repeatedly amended.

The Code Civil, Code of Civil Procedure, and Code of Commerce were maintained in force in Mauritius, by virtue of the eighth article of the Articles of Capitulation of December 3rd, 1810 (*z*), which expressly preserved to the inhabitants their religion, laws, and customs, and it was held by the Supreme Court of Mauritius in the case of *Colonial Government v. Laborde* (*a*), that this provision has not been affected by the cession of the island "in full right and sovereignty" to England by the Treaty of Paris in 1814.

**Historical Survey of the Judicial System of Mauritius.**—Prior to the Order in Council of April 13th, 1831, the different Courts of Justice in Mauritius were the following (*b*) :—

(I.) The Tribunal d'Appel, called the Cour d'Appel by the *Arrêté* 28th Floreal, An XII.

(II.) The Tribunal de Première Instance.

(III.) Tribunaux or Bureaux de Paix.

Art. 2 of the Proclamation of December 28th, 1810 (Code Farquhar No. 14), preserved these tribunals under the English Government on

(*u*) See Bonnefoy, "Table Générale," tit. "Code," p. 93.

(*x*) Govt. Notif., September 10th, 1833.

(*y*) Govt. Notif., March 5th, 1846.

(*z*) See Rev. Laws, 1905, vol. iv., p. 1.

(*a*) *Ubi cit. sup. n. (s)*. See p. 200, n. (*o*).

(*b*) "Rev. Laws," i., p. 236, n.

the same basis as that on which they existed at the time of the surrender of the Island, with the exception, however, of (a) the formulary of the judgments, and (b) the right of appeal to the French Courts, an appeal thenceforward lying to the King in Council, as formerly the parties had a right of appeal to the Court of Cassation, when the amount of the judgment appealed from exceeded 4,000 dollars. The Order in Council of April 13th, 1831 (c), suppressed the Cour d'Appel, and provided that the Supreme Court for the Colony should thenceforth be held before three Judges and no more. The Tribunal de Première Instance was maintained—to consist of one Judge (*President*) and another (*Suppléant*). A “Petit Court” was created in the town of Port Louis, to be holden by a Juge de Paix, for the decision of all civil causes of small amount arising within the island, and for the trial of all crimes and offences of a low degree committed therein. Similar “Petit Courts” were to be created in the dependencies if and when necessary.

Between 1851 and 1853 the entire judicial system of Mauritius was reorganised. By an Order in Council of October 23rd, 1851 (d), ratifying the Supreme Court Ordinance, 1850 (e), the Tribunal of First Instance was abolished, and the Cour d'Appel was converted into the Supreme Court, consisting of a Chief Judge and two Puisne Judges—as opposed to three under the old *régime*—who had no longer any collective appellate jurisdiction. A new tribunal—the Bail Court—presided over by the Judges of the Supreme Court, singly and in turn, was however created, with—

(i) An appellate jurisdiction, by way of review, over judgments and convictions in the District Courts, which were constituted in 1852, and to which the cognisance of correctional and police cases, as well as of certain classes of civil cases, where the amount at stake did not exceed £100, was then transferred; and

(ii) An original jurisdiction in all cases not exceeding £100 and not within the competence of the District Courts. From the judgments of the Bail Court there was no appeal.

From the end of 1869 down to the enactment of the Supreme Court Ordinance, 1881 (No. 14 of 1881), there was a persistent

(c) Stat. R. & O. Rev., 1904, vol. viii., “Mauritius,” p. 21.

(d) *Ibid.*, p. 379; and see Stat. R. & O. Rev., 1904, vol. viii., “Mauri-

tius,” p. 25.

(e) No. 2 of 1850; “Rev. Laws,” i., p. 238.

agitation on the part of the Bar and the attorneys of the Supreme Court against the judicial system established between 1851 and 1853 (*f*). The main objects of this agitation were to secure the appointment of a fourth Judge and the abolition of the Bail Court. As regards the former of these proposals, the agitation was chiefly due, at the outset, to the supposed necessity of counteracting the influence of any one member of the Bench over his colleagues. As regards the Bail Court, the reasons urged in favour of doing away with this tribunal were principally the cumbrousness of the jurisdiction which it divided with the District Courts and the expense to which parties residing in distant rural districts were put in having recourse to it.

In 1881 a fourth judgeship, sanctioned by Despatch No. 63 of 1880, was created, the Supreme Court being enabled to sit in two divisions of two Judges (as a quorum) each; the bankruptcy and insolvency jurisdiction previously exercised by the Judges in turn was transferred to the Master of the Supreme Court; the Bail Court was abolished, and its jurisdiction on the civil side was conferred on the District Courts.

The only remaining points that have to be noted in this historical survey are the continued agitation by the legal profession from 1887 onwards for a compulsory quorum of three Judges in all civil actions and appeals (see "Observations of the Bar," 1 December, 1887; and "Minutes of Debates in Council," 1896—97, pp. 117 *et seq.*, 1219 *et seq.*, and 1897—98 *passim*); the enactment in 1896 of an Ordinance (No. 20 of 1896) giving a compulsory quorum of three Judges in all cases; the disallowance of this Ordinance by the Secretary of State, who was only prepared to sanction such a quorum in cases where the amount at issue exceeded Rs. 5,000 (Despatch of December 8th, 1897); and the transfer in 1898 of the

(*f*) See the following papers, of which a published copy exists in Mauritius:—Letter of November 22nd, 1869, to Sir Henry Barkly; Recommendations of Sir C. Antelme's Committee, March 1st, 1870, March 12th, 1870; Memorial to Lord Granville, January 27th, 1870; Letter by Bar and Attorneys to Sir C. Antelme, April 7th, 1870; Similar Letter to Viscount Bury, M.P., April 26th, 1871; Memorial by Bar and

Attorneys to Sir Arthur Gordon, July 10th, 1871; Reply by Sir Arthur Gordon, December 9th, 1878; Memorial to Sir Arthur Phayre by Bar and Attorneys, No. 2, June 19th, 1879; Report of Legal Committee of Council on proposed increase of Judges; Despatches, No. 261, September 3rd, 1879; No. 28, January 22nd, 1880; No. 81, July 20, 1880.

bankruptcy jurisdiction from the Master to a Bankruptcy Division of the Supreme Court, consisting of a single Judge, from whose decision an appeal lies to the other members of the Bench.

**Supreme Court.**—The Supreme Court in Mauritius now consists of a Chief Judge—the title of Chief Justice is now coming into ordinary use—and three Puisne Judges (*g*). It has the jurisdiction of the King's Bench in England (*h*), is a Court of equity (*i*), and holds assizes (*k*). A Bankruptcy Division of the Supreme Court was constituted by Ordinance No. 61 of 1898—99, and to it was transferred jurisdiction in bankruptcy, insolvency, and the winding-up of companies. The ordinary mode of trial in civil cases is trial by a Court of two Judges—no lower quorum, except in the Bankruptcy Division, where the Judges of the Supreme Court preside singly in turn, is recognised. But parties have a right to three Judges whenever their cases are appealable to the Privy Council, *i.e.*, whenever the amount at stake exceeds Rs.10,000, and it has been the practice to concede a quorum of three Judges in cases of legal difficulty, or in actions in which numerous witnesses were to be heard, in order to obviate the necessity for re-argument or re-hearing if the Judges differed, there being no provision in the law of Mauritius for the withdrawal of the judgment of the junior of the two dissenting Judges, or for the application of the rule: “*Præsumitur pro negante*” (*l*).

(*g*) No. 2 of 1850, s. 1.

(*h*) *Ibid.*, s. 2.

(*i*) *Ibid.*, s. 3. As to the power of the Court in matters of injunction, see *Richer & Co. v. Oriental Bank Corporation* (1881), Dec. S. C. (1881), p. 30; *Beau Plan Sugar Estates Co. v. Pamplémousses Sugar Estates Co.* (1884), Dec. S. C. (1884), p. 9.

(*k*) No. 14 of 1881. Assize cases are tried by a jury of nine, a majority of seven to two being required for a verdict. In civil cases, trial by jury is theoretically competent, the prescribed number being seven, and the required majority five to two, but the settled jurisprudence of the Supreme Court is against the grant of permission to have civil cases tried by jury. Criminal procedure in the Assize Court

is governed, on English lines, by Ordinance No. 29 of 1853. Points may be reserved by the Judge for consideration by the Supreme Court.

(*l*) Disagreements between two Judges, sitting together, have not in Mauritius been common, although several of them have entailed heavy costs on parties. It appears from an Appendix to an opinion written by Sir F. T. Piggett, when acting Chief Judge, on November 18th, 1896, on the three-judge question, that from October, 1892, to October, 1896, only seven cases had been re-argued because of a disagreement between the Judges who heard them in the first instance. Only a few cases of re-argument have occurred since. In three of these, the Judges were unable to agree. In a third,

Divorce cases are tried also by a bench of two Judges, the Registrar being bound by Art. 22 of the Divorce Ordinance, 1872 (*m*), to take down the oral evidence in writing (a practice which is followed also in all cases appealable to the Privy Council), while the "Ministère Public" (a representative of the Parquet, of which the Procureur and Advocate General (*n*) is the head) is required to attend and give his conclusions on the issues to the Court. Interlocutory business is transacted in Chambers, where the Judges sit in rotation. Art. 2 of the Chambers Ordinance, 1855 (*o*), provides that "the matters set out" in a schedule to the Ordinance "may, subject to the discretion of the Judge to refer the same to the Court, be henceforth finally disposed of at Chambers by a Judge's order." The schedule excepts from the jurisdiction of the Chambers Judge questions as to the cancellation or reduction of mortgage inscriptions, removal of seizures, validity or nullity of attachments, and partition of property where an objection is raised by a party to any of these proceedings. An appeal lies from Chambers and from the Bankruptcy Division to the Full Court. Appeals also lie from the District and Stipendiary and Police Courts of the colony and its dependencies to the Supreme Court. From the Supreme Court an appeal lies to the Privy Council, in the case of final judgments involving sums or a value above Rs. 10,000 (*p*). The Supreme Court of Mauritius formerly exercised appellate jurisdiction over the Consular Court of Madagascar (*q*). But when Madagascar became a French colony in August, 1896, the extritorial jurisdiction ceased.

re-argument was ordered, not because of disagreement, but because of the importance and delicacy of the issue. In two other cases, no reason for the re-argument was given. It should be added, however, that it has not been uncommon for a third Judge to be called in at an early stage in two-judge cases. In one case, a motion for committal for contempt (*Procureur-General v. Newton* (1903), Dec. S. C. (1903), p. 26), the three Judges who heard it came each to a different conclusion. One was in favour of the motion being dismissed—with costs, however, against the respondent; the second held that a fine should be imposed; the third was in favour of

imprisonment. Under these circumstances the Judge, who was in favour of the fine, withdrew his judgment, and associated himself with the view that the motion should be dismissed with costs.

(*m*) No. 14 of 1872.

(*n*) As to the present position of the Procureur-General, see Order in Council of October 23rd, 1851, art. 12; and "Rev. Laws," iv., p. 61.

(*o*) No. 24 of 1855.

(*p*) Orders in Council of April 13th, 1831 (Stat. R. & O. Rev., 1904, vol. viii., "Mauritius," p. 21), and December 12th, 1894.

(*q*) See Order in Council of February 4th, 1869; Instructions of July 31st,

**District Courts.**—In every district a District Court is held before a district magistrate (*r*): (A) With *civil* jurisdiction up to Rs. 1,000 (*s*), there being an unlimited right of appeal to the Supreme Court (*t*). The magistrate's jurisdiction is not ousted by the fact that (1) in order to adjudicate on a claim within his jurisdiction he has to decide on a right to property exceeding Rs. 1,000 in value (*u*); or (2) in actions for rent and damages not exceeding Rs. 1,000, the value of the property exceeds that sum (*x*); or (3) in possessory actions, the value of the property exceeds Rs. 1,000, if (a) the action is entered within a year of the alleged trespass; (b) the plaintiff has been in quiet possession for at least a full year; (c) the damages claimed do not exceed Rs. 1,000 (*y*). (B) With *criminal* jurisdiction in summary cases (*z*). Questions within the jurisdiction of the district magistrates may be referred by the Procureur-General to a bench of three magistrates (*a*).

One of the district magistrates acts at Port Louis as Police magistrate (*b*), with jurisdiction to hold preliminary inquiries, and to try contraventions of by-laws (*c*).

**Stipendiary Courts.**—Under the Labour Law, 1878 (*d*)—an enactment passed for the purpose of regulating the position of the Asiatics who are engaged on sugar plantations (*e*)—stipendiary magistrates exercise exclusive jurisdiction for the enforcement of all contracts of service, and for imposing all penalties for the breach thereof (*f*), and for the determination of all questions of ill-usage as between master and servant (*g*). An appeal lies to the Supreme Court, where the sum adjudged to be paid exceeds, if by a master, Rs. 20 or, if by a servant, one month's wages (*h*).

**Rodrigues.**—The island of Rodrigues, occupied by a British force in 1809 to 1810 (*i*), is a dependency of Mauritius. Justice is

1891 (Hert. xix., p. 1); and Haggard v. by No. 32 of 1898.

Pelicier [1892] A. C. 61.

(*r*) No. 21 of 1888, s. 2.

(*s*) No. 22 of 1888, s. 5.

(*t*) Ord. 32 of 1900.

(*u*) No. 22 of 1888, s. 6.

(*x*) *Ibid.*, s. 7.

(*y*) *Ibid.*, s. 9.

(*z*) No. 23 of 1888, s. 64; the exceptions, which are numerous, are set out in s. 67.

(*a*) No. 23 of 1888, s. 81. The constitution of the Bench is governed

(*b*) No. 20 of 1860, s. 1.

(*c*) *Ibid.*, s. 2.

(*d*) No. 12 of 1878.

(*e*) This ordinance was passed in consequence of the recommendations of a Royal Commission appointed in 1876.

(*f*) *Ibid.*, s. 249.

(*g*) *Ibid.*, s. 251.

(*h*) *Ibid.*, s. 272.

(*i*) As to the history of the island, see Lucas, "Hist. Geog.," i., p. 162.

administered by a Magistrate, who has some of the powers of a District Magistrate in Mauritius (*k*).

The administration of justice in the lesser dependencies of Mauritius, known as the Oil Islands, is in the hands of visiting Magistrates (*l*).

**SEYCHELLES ISLANDS.**—**Political History.**—The Seychelles Islands were explored by the direction of Labourdonnais, whose name they at first bore ("Iles de Labourdonnais"). They were definitely annexed to the French Crown between 1754 and 1756, and received their present name in honour of Herault de Séchelles, then Controller of Finance in France. The chief island, Mahé, however, still bears the christian name of Labourdonnais (*m*). They capitulated to England some years before Mauritius, and were recognised as part of the British Empire by the peace of 1814 (*n*). Till recently a dependency of Mauritius, the Seychelles were erected into a separate Colony—called the Colony of Seychelles—by Letters Patent dated August 31st, 1903 (*n*).

**Law in Force.**—The laws of Seychelles are mainly based on the French codes in force in Mauritius, modified first by the laws of that colony, and subsequently by local regulations and ordinances (*o*).

**Courts of Law.**—A Supreme Court, consisting of a Chief Justice only, has been constituted by the Seychelles Judicature Order in Council, dated August 10th, 1903 (*p*). The Court is invested generally with the jurisdiction of the High Court of Justice in England (*q*), is a Court of equity (*r*), a Colonial Court of

(*k*) See Ordinances Nos. 34 and 35 of 1852.

(*l*) See the Lesser Dependencies Ordinance, 1904; and Proclamation No. 30 of 1904. A list of these islands is given in Schedule A. to the Ordinance.

(*m*) Lucas, "Hist. Geog.," i., pp. 169, 170.

(*n*) Stat. R. & O. Rev., 1904, vol. xi., "Seychelles," p. 1. A list of the islands in the Seychelles Archipelago will be found in the Schedule to these Letters Patent. See also the instructions to the Governor of Seychelles, dated August 31st, 1903, and to the

Governor of Mauritius, dated September 1st, 1903; the Seychelles Legislature Order in Council, 1903 (August 10th, 1903) (Stat. R. & O. Rev., 1904, vol. xi., "Seychelles," p. 7).

(*o*) Edited by F. A. Herchenroder, K.C., then Chief Justice, and A. K. Young, then Crown Prosecutor and Legal Adviser of the Government of the Colony. They were published in a revised form in 1904.

(*p*) Stat. R. & O. Rev., 1904, *ubi cit. sup.*, p. 9.

(*q*) Seychelles (Jurisdiction) Order in Council, 1903, s. 6.

(*r*) *Ibid.*, s. 7.

Admiralty (s), and a Court of Appeal as regards all other Courts in the Colony (t). Express power is given to it to investigate cases of alleged professional misconduct by practising barristers and attorneys, and to suspend offenders from practice in respect thereof (u). Such cases may be entered by plaint with summons in the ordinary form at the instance of the Crown Prosecutor (x). An appeal lies, under the conditions applicable as regards Mauritius (y), to the Supreme Court of Mauritius (1) from all final judgments in civil cases where the amount at stake exceeds Rs. 2,000 (if the amount in issue is Rs. 10,000 or upwards, an appeal lies direct, if desired, in the first instance, to the Privy Council); (2) from all final judgments, irrespective of the value involved, in matters of divorce, judicial separation, interdiction, and of the permanent or temporary suspension of any professional person from practice (z); (3) from convictions (other than capital, which are regulated by a separate Order in Council (a)) whenever the penalty awarded exceeds two years' imprisonment, or Rs. 2,000 fine, "provided that the ground of such appeal is that the conviction is based upon an erroneous application of the law" (b). The Judge may reserve a point for the ruling of the Supreme Court of Mauritius in any case, civil or criminal (c). Provision is made also for the constitution of inferior Courts (d).

Capital cases are tried at Victoria, in the Island of Mahé, which is the seat of government, by a Court of Assize, consisting of the Chief Justice, as President, and not less than eight assessors (e). All questions of law are to be determined by the Judge; all questions of fact by the unanimous verdict of the Court, or by the verdict of a majority of its members (f). The assessors are to be chosen by the Governor, with the advice

(s) Seychelles (Judicature) Order in Council, 1903, s. 8.

(t) *Ibid.*, s. 11.

(u) *Ibid.*, s. 9 (1).

(x) *Ibid.*, s. 9 (2).

(y) *Ibid.*, s. 14; and see *supra*, p. 206.

(z) *Ibid.*, s. 15.

(a) See *infra*, n. (e).

(b) Seychelles (Judicature) Order in Council, 1903, s. 16.

(c) *Ibid.*, s. 17 (1). A similar pro-

B.C.L.

vision is contained in the Mauritius Judicature (Seychelles Appeals) Order in Council, 1903 (December 8th, 1903) (Stat. R. & O. Rev., 1904, vol. xi., "Seychelles," p. 37).

(d) Seychelles (Judicature) Order in Council, 1903, s. 24.

(e) Seychelles Capital Offences Order in Council, 1903 (August 10th, 1903) (Stat. R. & O. Rev., 1904, *ubi cit. sup.* p. 15).

(f) *Ibid.*, ss. 5, 7.



of the Executive Council, in December of each year for the year next ensuing (g).

No person shall be placed on the list of assessors unless he possesses the following qualifications : (h)

- (a) Is a British subject by birth or by naturalization ;
- (b) Is resident in Seychelles ;
- (c) Is of the male sex and of age ;
- (d) Has not been convicted of any crime, unless he shall have obtained a free pardon ;
- (e) Has a clear income arising out of lands, houses, or other real estate of at least Rs. 500 per annum, or a clear personal estate of the value of at least Rs. 5,000, or is the husband of a person possessing such income or estate ; or
- (f) Is and has been for not less than six months in receipt of a salary of at least Rs. 750 per annum.

At the close of the trial of a capital charge, the Judge sums up the case to the assessors, unless he thinks there is no evidence to go to them, in which case he will direct a verdict of acquittal to be returned ; the Court then deliberate, and the verdict is announced in open Court by the Judge (i). The assessors may return a special verdict, in which case the Judge decides the law arising out of the facts, in open Court (k). If an assessor dies, or becomes incapable, during the trial of a case, the trial is to proceed, unless the number of assessors is reduced to less than four, when the formation of a new Court is necessary (l).

Capital sentences are not to be executed except with the assent of the Governor (m). As already stated (n), points of law may be reserved for the decision of the Supreme Court of Mauritius.

(g) Seychelles (Capital Offences)  
Order in Council, 1903, *ubi supra*, s. 23.

(h) *Ibid.*, s. 24.

(i) *Ibid.*, ss. 90—92.

(k) *Ibid.*, s. 94.

(l) *Ibid.*, s. 93

(m) *Ibid.*, s. 113.

(n) *Supra*, p. 209, n. (c).

## CHAPTER V.

### NORTH AMERICAN COLONIES.

**DOMINION OF CANADA: Political History.**—Canada formed one Colony from its cession by France to England under the Treaty of Paris, February, 1763, until 1791. The official name of this Colony was the Province of Quebec (*a*).

In that year the old Province of Quebec was divided by the Constitutional Act, 1791 (*b*), into two provinces to be called the Province of Upper Canada and the Province of Lower Canada (*c*).

In 1840, by the Union Act (*d*), these two provinces were again united under the name of the Province of Canada.

In 1867, by the British North America Act (*e*), the parts of the Province of Canada which formerly constituted the Provinces of Upper Canada and Lower Canada were again severed (*f*), and it was provided that the part which formerly constituted the Province of Upper Canada should constitute the Province of Ontario; and the part which formerly constituted the Province of Lower Canada should constitute the Province of Quebec (*g*).

The Dominion of Canada was created by the last-named Act, and was composed originally of the Provinces of Quebec, Ontario (formed as above), Nova Scotia, and New Brunswick, which were federated. Under express provision in the Act for the admission of other British Colonies and Possessions in North America, Rupert's Land and the North-West Territories were admitted into the Union in 1870, British Columbia in 1871 (*h*), Prince Edward Island in 1873 (*i*). The Province of Manitoba was formed out of

(*a*) See Commission of Governor Murray, 1763 (printed in Houston, "Constitutional Documents of Canada," p. 74; Quebec Act, 1774 (14 Geo. III. c. 83).

(*b*) 31 Geo. III. c. 31.

(*c*) *Ibid.*, s. 2.

(*d*) 3 & 4 Vict. c. 35.

(*e*) 30 & 31 Vict. c. 3.

(*f*) *Ibid.*, s. 6.

(*g*) *Ibid.*

(*h*) Can. Stat., 1872, p. lxxiv.

(*i*) Can. Stat., 1873, p. ix.

the Territories in 1870 (*k*), and the Provinces of Alberta and Saskatchewan similarly in 1905 (*l*). Under the power given to the Dominion Parliament to provide for the government of any territory not included in any province (*m*), the Yukon Territory was constituted in 1898 (*n*).

**Distribution of Legislative Powers.**—The distribution of legislative powers between the Dominion and the Confederated Provinces (*o*) is regulated by the British North America Act, 1867.

**Powers of Dominion Parliament.**—The Dominion Parliament may make laws for the peace, order, and good government of Canada in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces ; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section (notwithstanding anything in this Act), the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated ; that is to say :—

1. Public debt and property.
2. The regulation of trade and commerce.
3. The raising of money by any mode or system of taxation.
4. The borrowing of money on the public credit.
5. Postal service.
6. The census and statistics.
7. Militia, military and naval service and defence.
8. The fixing and providing for the salaries and allowances of civil and other officers of the Government of Canada.
9. Beacons, buoys, lighthouses, and Sable Island.
10. Navigation and shipping.
11. Quarantine and the establishment and maintenance of marine hospitals.
12. Seacoast and inland fisheries.
13. Ferries between a Province and any British or foreign country or between any two Provinces.

(*k*) 33 Vict. c. 3 (Can.); and see 44 Vict. c. 14 (Can.) and 34 & 35 Vict. c. 28 (Imp.).

(*l*) Alberta Act (4 & 5 Edw. VII. c. 3) (Can.); Saskatchewan Act (4 & 5 Edw. VII. c. 42), s. 16.

(*m*) 34 & 35 Vict. c. 28, s. 4.

(*n*) 61 Vict. c. 6.

(*o*) For distribution of legislative power between the Dominion and the Provinces, see British North America Act, 1867, ss. 91, 92, and works cited below, p. 215, n. (*q*).

14. Currency and coinage.
15. Banking, corporation of banks, and the issue of paper money.
16. Savings banks.
17. Weights and measures.
18. Bills of exchange and promissory notes.
19. Interest.
20. Legal tender.
21. Bankruptcy and insolvency.
22. Patents of invention and discovery.
23. Copyrights.
24. Indians and lands reserved for the Indians.
25. Naturalization and aliens.
26. Marriage and divorce.
27. The criminal law, except the constitution of Courts of Criminal Jurisdiction, but including the procedure in criminal matters.
28. The establishment, maintenance, and management of penitentiaries.
29. Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces (*p*).

**Exclusive Powers of Provincial Legislatures.**—In each Province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated; that is to say:—

1. The amendment from time to time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the office of Lieutenant-Governor.
2. Direct taxation within the Province in order to the raising of a revenue for Provincial purposes.
3. The borrowing of money on the sole credit of the Province.
4. The establishment and tenure of Provincial offices and the appointment and payment of Provincial officers.

(*p*) 30 & 31 Vict. c. 3, s. 91.

5. The management and sale of public lands belonging to the Province and of the timber and wood thereon.
6. The establishment, maintenance and management of public and reformatory prisons in and for the Province.
7. The establishment, maintenance and management of hospitals, asylums, charities, and eleemosynary institutions in and for the Province, other than marine hospitals.
8. Municipal institutions in the Province.
9. Shop, saloon, tavern, auctioneer and other licences in order to the raising of a revenue for Provincial, local, or municipal purposes.
10. Local works and undertakings other than such as are of the following classes :—
  - (a) Lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province ;
  - (b) Lines of steamships between the Province and any British or foreign country ;
  - (c) Such works as, although wholly situate within the Province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the Provinces.
11. The incorporation of companies with Provincial objects.
12. The solemnisation of marriage in the Province.
13. Property and civil rights in the Province.
14. The administration of justice in the Province, including the constitution, maintenance, and organisation of Provincial Courts, both of civil and of criminal jurisdiction, including procedure in civil matters in those Courts.
15. The imposition of punishment by fine, penalty or imprisonment for enforcing any law of the Province made in relation to any matter coming within any of the classes of subjects enumerated in this section.
16. Generally all matters of a merely local or private nature in the Province.

The general scheme of the Act is to leave each Province still autonomous as to the law of property and civil rights, save in so

far as this law may be affected by legislation of the Parliament of Canada upon one of the subjects within its competence (*q*).

**DOMINION COURTS:** (I.) The Supreme Court of Canada, established by Canadian Act, 38 Vict. c. 11 (amended by Rev. S. C. 1886, c. 135, and 54 & 55 Vict. c. 25), in pursuance of s. 101 of the British North America Act, 1867 (*r*), consisting of a Chief Justice, called the Chief Justice of Canada (*s*), and five Puisne Judges, exercises appellate jurisdiction, civil and criminal, through the entire Dominion. Appeals lie to it from each Supreme Provincial Court from judgments on controverted election petitions, and in the winding up of companies; also from the Exchequer Court of Canada (*t*). The Judges of the Supreme Court may be consulted by the Canadian Privy Council, as the Judges are in England by the House of Lords (*u*), and any House of Parliament may refer to it any private Bill for report (*x*). Controversies (1) between the Dominion and a province, or (2) between provinces, or (3) raising a material question relating to the validity of provincial or Dominion laws, may be entertained by the Supreme Court (and the Court of Exchequer) where the provinces have passed laws to that effect. In (1) and (2) the proceedings are to be in the Court of Exchequer, with an appeal to the Supreme Court; in (3) the Judge who decides that a question is material orders the case to be removed into the Supreme Court for determination (*y*). The process of the Supreme Court runs throughout Canada (*z*). Appeals lie from the Supreme Court to the Privy Council by special leave (*a*), which no Colonial Legislature, *semble*, can deprive the Crown of the power to grant (*b*).

(*q*) See Liquidators of Maritime Bank v. Receiver-Gen. of N. Brunswick [1892] A. C. 437; Citizens Insurance Co. v. Parsons (1881) 7 A. C. 96; Att.-Gen. of Canada v. Atts.-Gen. for Ontario, Quebec, and Nova Scotia (Fisheries Case) [1898] A. C. 700; and see Clement, "Law of the Canadian Constitution," 2nd ed., Toronto, 1904; Lefroy, "Legislative Power in Canada," Toronto, 1898; Todd, "Parliamentary Government in the British Colonies," 1894, 2nd ed.; and Wheeler, "Confederation Law of Canada," 1896.

(*r*) 30 & 31 Vict. c. 3.

(*s*) 59 Vict. (Can.) c. 14.

(*t*) Rev. S. C., 1886, c. 135, s. 70; and 54 & 55 Vict. c. 25.

(*u*) *Ibid.*, s. 37.

(*x*) *Ibid.*, s. 38.

(*y*) Rev. S. C., c. 135, ss. 72—74.

(*z*) *Ibid.*, s. 105.

(*a*) See Johnston v. Minister, &c., of St. Andrew's Church (1877), 3 App. Cas. 159.

(*b*) *Sed quære*. See the following cases: Valin v. Langlois (1879), 41 L. T. Rep. 662; Th  berge v. Laury (1876), 2 App. Cas. 102; Cushing v.

(II.) **The Court of Exchequer**, established in 1875, in pursuance of the Canadian Act, 38 Vict. c. 11. Some points relating to it have been noted above under (I.). Causes in the Exchequer Court are heard before one Judge (c). The Exchequer Court has—(a) exclusive jurisdiction in cases in which relief is sought against the Crown; (b) concurrent jurisdiction in cases (1) relating to revenue, (2) in which, at the instance of the Attorney-General, any patent of invention, lease, or other instrument respecting land is impeached, (3) in which relief is sought against an officer of the Crown for an act or default in the performance of his duty, (4) in which the Crown is plaintiff or petitioner. It has jurisdiction, as well between subject and subject as otherwise—(a) in all cases of conflicting applications for any patent of invention, or for the registration of any copyright, trade mark or industrial design; (b) or in which it is sought to impeach or annul any patent of invention, or to have any entry in any register of copyrights, trade marks or industrial designs expunged or varied; and (c) in all other cases in which a remedy is sought respecting the infringement of any patent of invention, copyright, trade mark or industrial design, and in cases of claims to public lands (54 & 55 Vict. (Can.) c. 26, ss. 4, 5, 6). An appeal lies from it to the Supreme Court where the amount at issue exceeds 500 dollars, and—by leave of a Judge of the Supreme Court—on questions involving the validity of a Dominion or Provincial Act, or relating to any fee of office, &c., payable to His Majesty, or to any title to lands or tenements, annual rents, &c., whereby future rights might be bound. The Exchequer Court is a Colonial Court of Admiralty (d).

(III.) **Election Petitions Court**.—Jurisdiction is conferred on the following Courts for the trial within the respective Provinces of controverted elections to the Dominion House of Commons: (a) in Quebec, the Superior Court of the Province; (b) in Ontario, the

Dupuy (1880), 5 App. Cas. 409; Kennedy v. Purcell (1888), 59 L. T. Rep. 279; Prince v. Gagnon (1882), 8 App. Cas. 103; Clergue v. Murray [1903], A. C. 521.

(c) 50 & 51 Vict. c. 16.

(d) Under Colonial Courts of Admiralty Act, 1890 (Imp.). See Can. Act, 54 & 55 Vict. c. 29. As to

surrogate Judges in Admiralty, see Order in Council, March 8th, 1895; Stats. Can., 1895, p. 16; and Prize Courts Act, 1894 (57 & 58 Vict. (Imp.) c. 39). As to appeal to the Privy Council, see Richelieu and Ontario Navigation Co. v. Owners of Steamship *Cape Breton*, [1907] A. C. 112.

High Court of Justice of the Province; (c) in Nova Scotia, New Brunswick, Prince Edward's Island, and British Columbia, and *semble* Alberta, and Saskatchewan, the Supreme Court; (d) in Manitoba, the Court of King's Bench for the Province (e). The Judges of these Courts, when trying election petitions, constitute a Dominion and not a Provincial Court (f). An appeal lies on vital preliminary objections or points of law to the Supreme Court of Canada (g).

(IV.) **Criminal Courts.**—Although criminal law and criminal procedure are within the exclusive legislative authority of the Dominion under the British North America Act, the constitution of the Criminal Courts is assigned by the Act to the Provinces. The several Provinces, accordingly, have conferred criminal jurisdiction upon their respective Superior Courts and other local tribunals, who administer the Criminal law of the Dominion in accordance with procedure prescribed by the Dominion Parliament.

**PROVINCES: (I.) Alberta: Political History.**—The province was formed from the North-West Territories (h), and proclaimed to be part of the Dominion on September 1st, 1905.

**Law in Force.**—The law in force in the North-West Territories is continued in the new province (i).

**Courts.**—The courts and administration of justice in the North-West Territories were maintained in the new province. The *Supreme Court* presided over by a single judge (k) has the jurisdiction of the English Supreme Court (l), and of the Lord Chancellor in lunacy matters (m). An appeal lies from it to the Privy Council in cases exceeding £300 in value (n).

**Magistrates** appointed by the Lieut.-Governor (o) exercise jurisdiction in accordance with the Canadian Criminal Code (p). An appeal from their decisions lies to the Supreme Court (q). Summary jurisdiction is exercised by police magistrates under Part LVIII. of the Canadian Criminal Code, 1892 (r).

(II.) **British Columbia (including Vancouver's Island): Political**

(e) Rev. S. C. c. 9, s. 2.

(f) Munro, "Const. Can.," p. 220.

(g) Rev. S. C. c. 9, s. 50.

(h) 4 & 5 Edw. VII. c. 3.

(i) *Ibid.*, s. 16.

(k) N. W. T. Consol. Ord. 1898, No. 21, s. 7.

(l) *Ibid.*, s. 3.

(m) *Ibid.*, s. 9.

(n) Stat. R. & O. Rev. 1904, "Judicial Committee," p. 71.

(o) Consol. Ord., No. 32, s. 2.

(p) *Ibid.*, s. 8.

(q) *Ibid.*, s. 9.

(r) 6 Edw. VII. c. 13.



**History.**—Upon the discovery of gold in 1858, a large number of people entered the country, so that it was constituted a Crown Colony in that year. Vancouver's Island had been leased to the Hudson Bay Company in 1843, made a Crown Colony in 1849, and given a Governor and Council in 1850. The two Colonies were united by Imperial statute (s), and in 1871 became a Province of the Dominion. Deadman's Island was transferred to the Dominion by special grant dated March 27th, 1854 (t).

**Law in Force.**—By the English Law Act, 1888, the civil laws of England as they existed on November 19th, 1858, so far as they are not from local circumstances inapplicable, are in force in all parts of British Columbia. They are held, however, to be modified by legislation still having the force of law in the Province, or of any former Colony comprised within the geographical limits thereof (u).

**Courts.**—1. *Supreme Court.*—The Supreme Court for Vancouver's Island, constituted by Order in Council of April 4th, 1856, and the Supreme Court of Civil Justice of British Columbia, established in pursuance of a Commission of September 2nd, 1858, have been merged in one Court, called the "Supreme Court of British Columbia," after the union of the island with the province of British Columbia (x). The Supreme Court, presided over by a Chief Justice and four Puisne Judges, has complete cognisance of all pleas and jurisdiction in all cases, civil and criminal, within the province (y). Courts of Assize are held in different towns throughout the province on fixed days (z). Appeals lie to the Full Court from—(1) final judgments, orders, and decrees; (2) interlocutory judgments, orders, decrees; (3) County Courts; (4) judgments under any Act (a), and to three judges from the Territorial Court of Yukon (b). An appeal lies direct to the Privy Council where the amount at stake exceeds £300 (c), or to the Supreme Court of Canada, from whose decision an appeal to the Privy Council can only be taken by special leave of the Judicial Committee (d).

(s) 29 & 30 Vict. c. 67, s. 3.

(z) *Ibid.*, ss. 31 *et seq.*

(t) Att.-Gen. of British Columbia v. Att.-Gen. of Canada [1906] A. C. 552.

(u) Rev. Stat. (1897) c. 115.

(x) See B. C. Ordins., March 1st, 1869; April 22nd, 1870; and April 26th, 1870.

(y) R. S. B. C., 1897, c. 56, s. 10.

(a) R. S. B. C., c. 56, s. 72; and see, too, 1895, c. 12; 1896, c. 4.

(b) 62 & 63 Vict. c. 11, s. 10 (Can.).

(c) Order in Council, April 4th, 1856, Stat. R. & O. Rev., 1904, vol. vi., "Judicial Committee," at p. 16.

(d) As to Election Courts, see *supra*, "Canada, Dominion" (III.).

2. *County Courts* are established, with jurisdiction in civil cases up to 1,000 dollars (e), in ejectment up to 2,500 dollars (f), in equity up to 2,500 dollars (g), and in probate up to 2,500 dollars (h). An appeal lies to the Supreme Court on questions of law, or where the claim amounts to 100 dollars (i).

3. *Small Debt Courts* have petty debt jurisdiction up to 100 dollars (k). In cases of debt over 25 dollars, a County Court Judge may remove the claim to the County Court.

(III.) **Manitoba: Political History.**—Manitoba was formerly known as the Red River Settlement of the Hudson's Bay Company. When the Company surrendered their Charter to the Crown in order that Rupert's Land might be included in the Dominion, many of the inhabitants of the settlement rose in rebellion and established a Provisional Government under a half-bred chief. It was quelled by Canadian forces under Sir Garnet Wolseley. Manitoba was created a Province of the Dominion on July 15th, 1870 (l), and its boundaries extended in 1881 (m). By an Act of the Dominion Parliament in 1876 (n) the Lieutenant-Governor of Manitoba became *ex-officio* Lieutenant-Governor of the district of Keewatin.

**Law in Force.**—The law of England existing on July 15th, 1870, so far as the same can be made applicable to matters relating to property and civil rights, was put in force in the Province (o).

**Courts.**—1. The *Court of Appeal* (p) at Winnipeg consists of a Chief Justice and three other Judges, with all the jurisdiction, both civil and criminal, possessed by any Judge of the Court of King's Bench (q), who are also *ex-officio* Judges of the Court of King's Bench (r). Three judges form a quorum (s).

2. The *Court of King's Bench* (t) at Winnipeg (u), consisting of

(e) 5 Edw. VII. c. 14, s. 30.

(f) *Ibid.*

(g) *Ibid.*, s. 40.

(h) *Ibid.*, s. 42.

(i) *Ibid.*, s. 116.

(k) R. S. B. C., 1897, c. 55, amended 61 Vict. c. 15; 62 Vict. c. 19; 1 Edw. VII. c. 13.

(l) By Order in Council under 33 Vict. c. 3.

(m) 44 Vict. c. 14.

(n) Rev. Stat. of Canada, 1886, c. 53, s. 4.

(o) Rev. Stat. of Manitoba, 1902, c. 40, s. 24. Doubts as to the extent of the application of certain laws were set at rest by Act of the Dominion Parliament (51 Vict. c. 33). See also Clement, "Canadian Constitution," pp. 597—601.

(p) 5 & 6 Edw. VII. c. 18.

(q) *Ibid.*, s. 2.

(r) *Ibid.*, s. 6.

(s) *Ibid.*, s. 8.

(t) R. S. M., 1902, c. 40.

(u) *Ibid.*, s. 6.

a Chief Justice and two Puisne Judges (x), is a Court of Record, and enjoys all the powers of the superior Courts of law and equity in England (y). Provision is made for sittings *in banc* (z). The Judges of County Courts of the eastern judicial district are "local Judges" of the King's Bench (a). An appeal lies to the Privy Council where the amount at stake exceeds £300 (b), or direct to the Supreme Court of Canada, and thence to the Privy Council by special leave of the Judicial Committee (c).

3. There is a *Surrogate Court* in each judicial district with jurisdiction in matters relating to probate and administration (d).

4. *County Courts* have jurisdiction—(a) in tort and replevin up to 250 dollars; (b) in contract up to 400 dollars. The following actions are excepted:—(a) for gambling debts; (b) for spirituous liquors, &c., drunk in taverns; (c) on notes of hand for debts under (a) or (b); (d) ejectment; (e) in which the validity of a devise is disputed; (f) malicious prosecution, libel and slander, criminal conversation, seduction, breach of promise; (g) against a justice of peace if objection is made. An appeal lies to the Court of Appeal Judge if the amount at stake is above 20 dollars, but below 50, and to the Court *in banc* when the sum in dispute is over the latter amount. When there is a question of law, or a mixed question of law and fact, application for leave to appeal may be made, however small the sum in dispute (e).

(IV.) **New Brunswick: Political History.**—New Brunswick was separated from Nova Scotia and granted a constitution by Royal Charter in 1784 (f). The boundaries between Canada and the Colony were fixed by Act of the Imperial Parliament (g). It became a Province of the Dominion under the British North America Act, 1867 (h).

**Law in Force.**—No law of the Nova Scotia Legislature passed prior to the creation of the Province has any force in New

(x) 5 & 6 Edw. VII. c. 18, s. 3.  
(y) See R. S. M. 1902, c. 40; ss. 8, 23 *et seq.*  
(z) *Ibid.*, ss. 19—22, 57, 58.

(a) *Ibid.*, s. 87. See further, R. S. C., appended to 1895, c. 6 (at p. 43), and amending Act, 1897, c. 4, and 1898, c. 13.

(b) Order in Council, March 16th, 1892, Can. Stat. 1892, at p. 13;

St. R. & O. Rev., 1904, vol. vi., "Judicial Committee," p. 55.

(c) As to Election Court, see *supra*, "Canada, Dominion Courts" (III.).

(d) See R. S. M., 1902, c. 38.

(e) *Ibid.*

(f) Clark, "Colonial Law," p. 412.

(g) 14 & 15 Vict. c. 63, explained by 20 & 21 Vict. c. 34.

(h) 30 & 31 Vict. c. 3, s. 3.

Brunswick (*i*). The tendency, at least of the earlier authorities, seems to have been not to reject Imperial statutes unless clearly inapplicable to the Province (*k*).

**Courts.**—1. The *Supreme Court* originally derived its authority from the King's Commission to the first Governor-General, Carleton, and was invested with the powers and authorities of the three Superior Courts of law at Westminster (*l*). By the Judicature Act of 1906 all the existing Courts were abolished, and one Supreme Court established with two divisions—the Court of Appeal and the Trial Division (*m*). It consists of a Chief Justice and five other Judges (*n*). There are sittings of the Court similar to the former Circuit Courts for every county in the Province (*o*), and special Courts of Oyer and Terminer and General Gaol Delivery may be held when necessary in any county (*p*). The proceedings on the equity side of the Court are heard by one of the Judges of the Court of Appeal, known as the Judge in Equity (*q*). An appeal lies from the final judgment of the Supreme Court for a sum amounting to £300, or on questions whereby the rights of the Crown may be bound, direct to the Privy Council (*r*). There is also the usual alternative appeal to the Supreme Court of Canada and thence to the Privy Council by special leave of the Judicial Committee (*s*).

2. *County Courts* (*t*).—There is a County Court in each province under a Judge, who must be at the time of his appointment a barrister of seven years' standing (*u*). These tribunals have jurisdiction in all personal actions of debt up to 400 dollars, in actions of tort up to 200 dollars, in actions on bonds given to the sheriff of whatever amount (*x*), and (*y*) in actions on other bonds where the real debt does not exceed 400 dollars. They have no jurisdiction where—(1) the title to land is brought in

(*i*) Consolidated Stat. of New Brunswick, c. 1, s. 3.

(*k*) Clement, "Canadian Constitution," pp. 92—94. See also 6 Edw. VII. c. 37, s. 16.

(*l*) See the Commission of the first Chief Justice, printed in *Att.-Gen. v. Baillie* (1842), 1 Kerr, N. B. at p. 453.

(*m*) 6 Edw. VII. c. 37, s. 3.

(*n*) *Ibid.*, s. 5.

(*o*) *Ibid.*, s. 9.

(*p*) *Ibid.*, s. 9 (6).

(*q*) *Ibid.*, s. 9(1).

(*r*) Order in Council, November 27th, 1852.

(*s*) As to the position of the Supreme Court in regard to election petitions, see "Canada, Dominion Courts," *supra*.

(*t*) As to the history of these tribunals, see Munro, "Const. Can.," 101; R. S. N. B. (1903), c. 116.

(*u*) *Ibid.*, s. 4.

(*x*) *Ibid.*, s. 10.

(*y*) *Ibid.*, s. 11.

question; or (2) the validity of a devise, bequest, or limitation is disputed (z). The County Courts possess concurrent criminal jurisdiction with the Trial Courts, except as regards offences specified in s. 840 of the Criminal Code, 1892, of Canada (a). An appeal lies to the Supreme Court from their decisions on points of law, or from a charge to a jury, or from decisions on motions for a new trial (b).

3. The *Probate Court* has full jurisdiction in all matters relating to wills or administrations, with an appeal to the Supreme Court (c).

4. A *Divorce Court* was constituted in 1860, and is now regulated by chapter 115 of the Consolidated Statutes, 1908.

5. *Parish Courts*.—In each parish a Court is held before a Commissioner, being a justice of the peace, appointed by the Lieutenant-Governor in Council, with jurisdiction in actions of debt up to 80 dollars, and in actions of tort up to 92 dollars (d). These Courts have no jurisdiction where the Sovereign is a party or the title to land is involved, or the debt exceeds 40 dollars, or is reduced to that sum by payment, &c., or where the action is for debt against personal representatives, &c.

6. *Local Courts*, held by stipendiary and police magistrates, have civil jurisdiction to the same extent and in the same manner as the Parish Court Commissioners (e).

7. *Justices' Civil Courts* have jurisdiction in debt up to 20 dollars, and in tort up to 8 dollars.

(V.) **North-West Territories: Political History.**—By an Act of the Dominion Parliament (f) put into force by Proclamation, October 7th, 1896, the Territories formerly known as Rupert's Land and the North-Western Territory were, with the exception of such portions thereof as form the Province of Manitoba and the district of Keewatin, to be called and known as the North-West Territories and created into a Government entirely separate from Manitoba (g). In 1882 a portion of the Territories was organised into four provisional districts, viz., Assiniboia, Saskatchewan, Alberta, and Athabasca, which in 1905 were formed into the Provinces of Alberta and Saskatchewan (h). Consequent upon this alteration

(z) R. S. N. B. (1903), c. 116, s. 9.

(a) *Ibid.*, s. 98.

(b) *Ibid.*, s. 80.

(c) R. S. N. B. c. 118.

(d) *Ibid.*, c. 120.

(e) *Ibid.*, c. 119, s. 4.

(f) 38 Vict. c. 49.

(g) Colonial Office List, 1906, p. 136.

(h) 4 & 5 Edw. VII. c. 3 and c. 42.

the Government of the North-West Territories was remodelled under a Commissioner and Legislative Council (*i*). The Yukon Territory was made separate in 1898.

**Law in Force.**—By the North-West Territories Act, 1880 (*k*), the laws of England relating to civil and criminal matters as they existed on July 15th, 1870, shall be in force in the Territories in so far as they are applicable and have not been altered by Imperial, Dominion, or Provincial legislation (*l*).

**Courts.**—The Supreme Court was “disestablished” by the North-West Territories Act, 1905 (*m*), and the Governor authorised to appoint stipendiary magistrates with civil and criminal jurisdiction (*n*). Sentence of death awaits the confirmation of the Governor-General upon the advice of the Dominion Minister of Justice (*o*).

(VI.) **Nova Scotia: Political History.**—Nova Scotia, after being discovered by Cabot, under commission from King Henry VII., was colonised first by the French. It was taken by the English, and granted in 1621 to Sir William Alexander. The Charter containing the grant gave almost absolute authority to the grantee over a country larger than all the king’s dominions elsewhere. But no use seems to have been made of it until its renewal by Charles I. on his accession in 1625 (*p*). In 1632, however, it was restored to France by the Treaty of St. German en Laye (*q*), and did not again come into the possession of England until the peace of Utrecht (*r*). The Commission issued to the Governor in 1749 authorised him to summon “general assemblys of the free-holders and planters within your Government, according to the usage of the rest of our colonies and plantations in America” (*s*). Some doubt appears to have been raised by the French as to the force of the cession, so that by the Treaty of Paris, 1763, the King of France renounced “all the pretensions which he has heretofore formed, or might form, to Nova Scotia, or Acadia in all its parts, and guarantees the whole of it, and with all its dependencies, to the King of Great Britain” (*t*). It was followed by a proclamation

(*i*) 4 & 5 Edw. VII. c. 27.

(*k*) Rev. Stat. of Canada, c. 50, s. 11.

(*l*) See also Clement, “Canadian Constitution,” p. 580.

(*m*) 4 & 5 Edw. VII. c. 27.

(*n*) *Ibid.*, s. 8.

(*o*) *Ibid.*

(*p*) Dict. Nat. Biog., “Sir Wm. Alexander.”

(*q*) Colonial Office List, 1906, p. 126.

(*r*) Art. xii.

(*s*) Clement, “Canadian Constitution,” p. 26.

(*t*) Art. iv.

regulating the Government of the various acquisitions. The islands of St. John, now called Prince Edward Island, and Cape Breton, with the adjacent islands, ceded by the Treaty, were annexed to the Government of Nova Scotia (*u*). The system of "responsible government" was fully recognised by the resignation of the Executive Council, in pursuance of a vote of the Provincial Parliament of January 26th, 1848 (*x*). Nova Scotia became a Province of the Dominion under the British North America Act, 1867 (*y*).

**Law in Force.**—Nova Scotia has always been treated as a Colony by settlement as distinguished from a colony obtained by conquest or cession (*z*). The whole of the English common law is recognized as in force, excepting such parts as are obviously inconsistent with the circumstances of the country, but none of the statute law has been received except such parts as are obviously applicable and necessary (*a*).

**Courts.**—1. The *Supreme Court* consists of a Chief Justice, a Judge in Equity, and five Puisne Judges (*b*). It has the jurisdiction as nearly as possible of the Supreme Court of Judicature in England (*c*). Circuits are held twice a year for civil and criminal business (*d*). An appeal lies to the Privy Council on the same conditions as from New Brunswick (*e*). The Supreme Court is the Court for Crown Cases Reserved for the Province (*f*).

2. The Chief Justice is Judge of the *Vice-Admiralty Court* with jurisdiction over all Admiralty matters.

3. The Equity Judge is Judge of the *Court for Matrimonial Causes* with an appeal to the Supreme Court *in banc*.

4. Provision is made by the Revised Statutes of Nova Scotia (1900), c. 158, s. 157, for the gradual abolition of the office of Judge of Probate and for vesting his jurisdiction in Judges of County Courts for the County Court districts in which Probate Districts lie (*g*). An appeal lies to the Supreme Court (*h*).

(*u*) "Annual Register," 1763, p. 209.

(*x*) Mills, "Colonial Constitutions," p. 201.

(*y*) 30 & 31 Vict. c. 3, s. 3.

(*z*) Clement, "Canadian Constitution," p. 77.

(*a*) *Uniache v. Dickson* (1848), James N. S. Rep. p. 257. See also Clement, *loc. cit.*

(*b*) R. S. N. S., 1903, c. 155, s. 5.

(*c*) *Ibid.*, ss. 15, 16.

(*d*) *Ibid.*, ss. 29 *et seq.*

(*e*) Order in Council, March 20th, 1863, Stat. R. & O. Rev., 1904, vol. vi., "Judicial Committee," p. 73.

(*f*) As to the position of the Supreme Court in election petitions, see "Canada. Dominion Courts," *supra*.

(*g*) As to jurisdiction, see ss. 9, 10.

(*h*) *Ibid.*, ss. 125 *et seq.*

5. The *County Courts* have jurisdiction: in personal actions in tort or contract up to 400 dollars and not less than 20; in all actions on bail bonds to the sheriff, and in all actions against the sheriff, &c., for nonfeasance or malfeasance (i). The Supreme Court has concurrent jurisdiction. County Courts have no jurisdiction where the title to land or the validity of a devise is in question, or in actions for criminal conversation and seduction, or breach of promise. Judges of County Courts are Masters of the Supreme Court (k), exercise appellate jurisdiction over Inferior Courts, and appeals lie from them to the County Courts.

6. The *Justices' Courts* have jurisdiction in actions of debt up to 20 dollars (one justice); up to 80 dollars (two justices) (l).

(VII.) **Ontario: Political History.**—The changes in the government of the province have been mentioned in the history of the Dominion (m).

**Law in Force.**—By the first Act of the Provincial Parliament of Upper Canada, passed on October 15th, 1792, the laws of England relative to property and civil rights in force on that date and the law of evidence were adopted in the Province (n). The previous law had been the same as for Quebec (o).

**Courts.**—1. *Supreme Court.*—The Judicature Act (p) consolidates previous Acts as to the Supreme Court of Ontario. The Court is divided into—(1) the High Court of Justice; and (2) the Court of Appeal (q). The Lieutenant-Governor in Council may refer any matter to the Court for hearing and consideration (r).

The High Court is subdivided into—(a) the King's Bench Division, under the Chief Justice of the King's Bench and two Puisne Judges; (b) the Chancery Division, under the Chancellor of Ontario—styled the Chancellor—and two Puisne Judges; (c) the Common Pleas Division, under the Chief Justice of the Common Pleas and two Puisne Judges (s); and (d) the Exchequer Division, under the Chief Justice of the Exchequer Division and two Puisne Judges.

(i) Rev. S. N. S., 1900, c. 156, ss. 28 *et seq.*

(k) N. S. Jud. Act, 1884; and see, further, powers conferred on them by 1897, c. 32.

(l) Rev. S. N. S., 1900, c. 160, s. 1.

(m) See *supra*, p. 211.

(n) 32 Geo. III. c. 1, Upper Canada, Rev. Stat. of Ontario, 1897, c. 111.

See also Clement, "Canadian Constitution," pp. 94—128.

(o) See *infra*, pp. 229, 230.

(p) R. S. O., 1897, c. 51.

(q) *Ibid.*, s. 3 (2).

(r) R. S. O., 1897, c. 84.

(s) R. S. O., 1897, c. 51, ss. 3 (1), 1 (3), amended by 3 Edw. VII. c. 8.



The Court of Appeal consists of the Chief Justice of Ontario and four Justices of Appeal (*t*). The Chief Justice of Ontario and the Justices of Appeal may hold assizes, as well as the Justices of the High Court.

The jurisdiction of the High Court is that possessed by the English superior Courts of Law and Equity at certain specified times (*u*). The Court of Appeal is a superior Court with appellate jurisdiction, civil and criminal (*x*), and has also jurisdiction in election cases (*y*). Provision is made for sittings of Divisional Courts of the Court of Appeal (*z*), or of the High Court composed of three Judges (*a*). An appeal lies—(1) to a Divisional Court of the High Court from interlocutory orders by a Judge, or from Surrogate Courts, County Courts, and other inferior tribunals (*b*); (2) to the Court of Appeal from other judgments, whether of a Divisional Court or a Judge, and in motions for new trials (*c*). The decision of a Divisional Court of the Court of Appeal binds the Court of Appeal and all its divisions (*d*). The decision of a Court of co-ordinate authority is binding, but if the Judge regards it as doubtful he may refer the question to a higher Court (*e*). Not less than two assizes are to be held at the county town of every county and union of counties in the year (*f*). The judgment of the Court of Appeal is final, except where the question is as to the title to realty, the validity of a patent, an amount exceeding 1,000 dollars exclusive of costs, or the taking of an annual or other rent, &c., or where special leave is given by the Court of Appeal or the Supreme Court for Canada to appeal to the latter tribunal (*g*). An appeal lies direct to the Privy Council where the amount at stake is above 4,000 dollars, or is a question affecting the taking of annual or other rents, &c. (*h*), or to the Supreme Court of Canada on the condition above indicated, and thence to the Privy Council by special leave of the Judicial Committee. An appeal also lies to the Privy Council on certain financial matters (*i*).

(*t*) R. S. O., 1897, c. 51, s. 6.

(*u*) *Ibid.*, ss. 25 *et seq.*

(*x*) *Ibid.*, s. 49.

(*y*) *Ibid.*, ss. 11, 50.

(*z*) *Ibid.*, s. 12.

(*a*) *Ibid.*, ss. 70, 71.

(*b*) *Ibid.*, s. 75.

(*c*) *Ibid.*, s. 76.

(*d*) *Ibid.*, s. 81 (1).

(*e*) *Ibid.*, s. 81 (2).

(*f*) *Ibid.*, ss. 83 *et seq.*

(*g*) R. S. O., 1897, c. 49, s. 2.

(*h*) Rev. Stats. (Ont.), 1897, c. 48.

See also *Gillett v. Lumsden* [1905] A. C. 601.

(*i*) 54 Vict. (Ont.) c. 2.

2. *County Court Judges and Local Courts (k).*—There is a County Court in every county. These Courts have jurisdiction in personal actions up to 200 dollars; in actions of debt, where the amount is liquidated or ascertained by act of parties, up to 600 dollars; to any amount in actions on bail bond to the sheriff or on recognisances; in replevin up to 200 dollars; for recovery of land up to 200 dollars; in partnership accounts up to 1,000 dollars; legacies up to 200 dollars out of estates not exceeding 1,000 dollars; actions for redemption up to 200 dollars; equitable relief up to 200 dollars (*l*). An appeal lies to the Divisional Court; and certain matters are excluded from the jurisdiction of County Courts (*m*). A County Court Judge may try without a jury, by consent, persons accused of minor offences (*n*). *The General Sessions of Peace* has jurisdiction to try certain offences, including forgery (*o*), but not treason, capital offences, or libel (*p*).

3. *Surrogate Courts.*—There is a Surrogate Court in each county with jurisdiction in testamentary matters (*q*), with right of appeal to the Divisional Court where the value of the property exceeds 200 dollars (*r*).

4. There are not less than three nor more than twelve *Division Courts* in each county (*s*), held once at least in every two months (*t*), under County Court Judges (*u*), with jurisdiction in personal actions up to 60 dollars, or 100 by consent; actions of debt up to 100 dollars; ascertained claims up to 200 dollars; replevin up to 60 dollars (*x*). An appeal lies to the Divisional Court (*y*).

5. *Justices of the Peace.*—As to these, see the Revised Statutes (Ont.), 1897, c. 86.

6. There are *Police Magistrates* in cities and towns (*z*). An appeal lies to the Court of Appeal on prosecutions to enforce penalties and punish offences under provincial Acts (*a*), and to the County Court from summary convictions (*b*).

7. Justice is administered in unorganised districts by *District, Surrogate, and Division Courts* (*c*).

(*k*) See County Courts Act, R. S. O., 1897, c. 55.

(*l*) *Ibid.*, s. 23.

(*m*) *Ibid.*, ss. 22, 50—57.

(*n*) Rev. Stats. (Ont.), 1897, c. 57.

(*o*) *Ibid.*, cc. 56, 58.

(*p*) *Ibid.*, c. 58, s. 1.

(*q*) R. S. O., 1897, c. 59, s. 3; and see ss. 17—21 as to jurisdiction.

(*r*) *Ibid.*, s. 36.

(*s*) *Ibid.*, c. 60, s. 4.

(*t*) *Ibid.*, s. 8.

(*u*) *Ibid.*, s. 22.

(*x*) R. S. O., 1897, c. 60, s. 72.

(*y*) *Ibid.*, c. 87.

(*z*) *Ibid.*, c. 87.

(*a*) *Ibid.*, c. 91.

(*b*) *Ibid.*, c. 92.

(*c*) *Ibid.*, c. 109; and see 1899, c. 14, ss. 4, 12.

(VIII.) **Prince Edward Island : Political History.**—The Island of St. John was ceded to Great Britain by the Peace of Paris (*d*). It received a separate government from May 1st, 1769 (*e*). To avoid confusion with St. John's, Newfoundland, St. John, New Brunswick, and St. John on the Labrador Coast, the name was changed in 1798 to Prince Edward Island (*f*). Responsible government was given to the colony in 1851 (*g*). It was admitted to the Dominion by Order in Council June 26th, 1873 (*h*).

**Law in Force.**—The common law of England is in force in the colony (*i*).

**Courts.**—1. The *Supreme Court*, established by Governor Patterson under his Commission (*k*), is composed on its common law side of a Chief Justice and two assistant-Judges, with jurisdiction analogous to that of the Court of King's Bench and Common Pleas; the equity jurisdiction is exercised by the Master of the Rolls (*l*) and the Vice-Chancellor (*m*) (who are also assistant-Judges of the Supreme Court), or by the Chief Justice in case of the legal disqualification of either (*n*). An appeal in equity lies to the Chief Justice, the Master of the Rolls, and the Vice-Chancellor (*o*). An appeal lies either direct to the Privy Council when the sum at stake amounts to 500*l.* (*p*), or to the Supreme Court of Canada, and thence to the Privy Council only by special leave (*q*).

2. The Lieutenant-Governor and Council were constituted a *Court of Divorce* by Provincial Act, 5 Will. IV. c. 10, and by the same statute the Lieutenant-Governor was empowered to appoint the Chief Justice to act in his stead (*r*).

3. *Insolvent Courts* under Commissioners appointed by the Lieutenant-Governor in Council were provided for by 31 Vict. (P.E.I.) c. 15.

(*d*) Chalmers, "Treaties," vol. i., 106.  
p. 471.

(*e*) Preamble to 13 Geo. II. c. 2.

(*f*) Provincial Act, 39 Geo. III.  
c. 1.

(*g*) Colonial Office List, 1906, p.  
135.

(*h*) Stat. R. & O. Rev., 1904,  
"Canada," p. 41.

(*i*) Safford and Wheeler, "Privy  
Council Practice," p. 400.

(*k*) Munro, "Const. Can.," pp. 32,

(*l*) 11 Vict. c. 6.

(*m*) 32 Vict. c. 4.

(*n*) 56 Vict. (P.E.I.) c. 4, ss. 1, 2.

(*o*) 46 Vict. c. 6.

(*p*) See *In re Cambridge* (1841), 3  
Moo. P. C. 455.

(*q*) As to jurisdiction of Supreme  
Court in election petitions, see 53  
Vict. (P.E.I.) s. 137.

(*r*) S. 3.

4. *Surrogate Courts* (36 Vict. (P.E.I.) c. 21) have jurisdiction in probate matters.

5. A *Marine Court of Inquiry* appointed by the Lieutenant-Governor in Council by commission (s) has jurisdiction in cases of vessels abandoned or damaged near the coast of the island, of loss of life owing to such casualties, and of charges of misconduct or incompetency against the masters of British ships (t).

6. *County Courts* have jurisdiction—(a) in contract and tort up to 150 dollars; (b) in actions on bail bonds given to the sheriff in the County Court or where the penalty is recoverable in the Small Debt Court; (c) in actions under statute in the Small Debt Court (u). There are the usual exceptions (with variations) from County Court jurisdiction—(a) detinue, &c., where the title to land is in question; (b) actions in which the validity of a devise, &c., is disputed; (c) criminal conversation and seduction; (d) breach of promise; (e) actions against executors and administrators, but these last may sue in the County Court; (f) actions against justices acting judicially; (g) actions on judgments of the Supreme Court (x). The appeal lies to the Supreme Court (y).

7. *Small Debt Courts* have jurisdiction in debt and trover up to 20*l.*, unless the title to land is in question or the action is founded on gambling transactions (z), and also in actions for rent where the amount cannot be recovered by distress (a).

8. *Two Justices* may try actions for debt up to 32 dollars, subject to an appeal to the County Court where the debtor does not give security for his appearance in the County Court (b).

The Courts of criminal jurisdiction are similar to those of Quebec. There are no local variations to call for notice.

(IX.) *Quebec (or Lower Canada): Political History.*—The principal dates in the political history of the province have been mentioned in the history of the Dominion (c).

**Law in Force.**—The sources of the law of Quebec prior to the cession to England in 1763 were the following:—

1. The *Coutume de Paris*, and the ordinances in force within the

(s) 27 Vict. c. 23, s. 1.

(t) *Ibid.*, s. 3.

(u) 41 Vict. (P.E.I.) c. 12, s. 17.

(x) *Ibid.*, s. 16.

(y) 36 Vict. (P.E.I.) c. 3, s. 65.

(z) 23 Vict. (P.E.I.) c. 16, s. 7.

(a) *Ibid.*, s. 8.

(b) 37 Vict. (P.E.I.) c. 19, s. 4.

(c) See *supra*, p. 211.

jurisdiction of Paris, except such as were clearly not intended to have effect outside France.

2. The *Arrets de Conseil du Roi* and the ordinances published between 1668 and 1763, but, in both cases, only if they had been registered by the Council of Quebec (*d*).

3. The ordinances of the administrative authorities in Canada, chiefly those of the Intendants.

4. The judgments of the Courts (*e*).

By the Quebec Act, 1774, it was provided that in civil matters the old law should still apply, while in criminal matters the English law should prevail. By a statute of the province in 1785, it was provided that in commercial matters the English rules of evidence should be followed (*f*). The province then included Upper Canada; but the Parliament of Upper Canada, when created a separate province by the Constitutional Act of 1791, repealed the former law as stated above (*g*).

In Quebec the civil law was codified in 1866 (*h*). A revised Code of Civil Procedure was brought into force on September 1st, 1897, by a proclamation following on 60 Vict. c. 48 (Q.).

**Courts.**—1. *The Court of King's Bench*, consisting of a Chief Justice and five Puisne Judges, exercises appellate jurisdiction over—(i.) the *Superior Court* (see below) against any final judgment except (a) in matters of *certiorari*; (b) in special proceedings against corporations illegally formed or violating or exceeding their powers, or complaints of the usurpation of any public official or franchise, in the nature of a *quo warranto*, and in writs of mandamus or prohibition; (c) where the sum in dispute is less than 200 dollars, and judgment has been rendered by the Court of Review consisting of three Judges; (d) at the instance of a party who has chosen to appeal to the Court of Review any cause other than those mentioned when the Court of Review has confirmed the judgment rendered in first instance(*i*); (ii.) *Circuit Courts* (a) where the sum in dispute amounts to

(*d*) See *Symes v. Cuvillier* (1880), 5 A. C. 138; *Stewart and Simpson v. Molson's Bank* (1894), R. J. Q. 4 Q. B. at p. 30, per Taschereau, J., and authorities there cited.

(*e*) All this body of law except the *Coutume* is collected in the "Edits et Ordonnances," reprinted in 3 vols. by

the Government, Quebec, 1854.

(*f*) 25 Geo. III. c. 2, s. 10; Consol. Stat. L. C., c. 82, s. 17.

(*g*) 32 Geo. III. c. 1, Upp. Can., see p. 225.

(*h*) The Civil Code came into force August 1st, 1866.

(*i*) Code Civ. Proc., art. 43.

the value of 100 dollars, except in certain suits for the recovery of assessments; (b) where the amount is less than 100 dollars, but the issue relates to fees of office, &c.; (c) in actions in recognition of hypothec. But no appeal lies to the Court of King's Bench in causes of the Circuit Court susceptible of appeal in which judgment has been rendered by the Court of Review (*k*).

In those cases where there is no appeal from the Court of Review to the Court of King's Bench, there is a direct appeal to the Privy Council if the case is one of the prescribed value or nature (*l*). There is also an appeal to the Court of King's Bench from interlocutory judgments which in part decide the issues or order the doing of anything which cannot be remedied by the final judgment, or unnecessarily delay the trial of the suit. The Lieutenant-Governor in Council may refer questions to the Court of King's Bench (*n*).

2. *The Court of Review*, composed of three Judges of the Superior Court, reviews final judgments of the Superior Court and Circuit Courts; if the judgment of the Superior Court is affirmed there is no appeal to the Court of King's Bench, at the instance of the party who has chosen to inscribe in review. If it is a judgment of the Circuit Court which is reviewed, the judgment of the Court of Review is final, whether it affirms or reverses the judgment of the lower Court. But an appeal lies to the Privy Council (*o*) or to the Supreme Court of Canada, if the case is of the value or nature which would have made it so appealable if it had been decided by the Court of King's Bench (*p*).

3. *The Vice-Admiralty Court* has jurisdiction in all Admiralty causes (*q*). The Harbour Commissioners of Montreal and the Harbour Commissioners of Quebec have the jurisdiction formerly belonging to the Trinity House of these cities respectively. They may determine all matters relating to beaches on the St. Lawrence, or disputes between pilots and shipmasters as to sums claimed for pilotage, and also complaints against pilots for neglect of duty (*r*).

- |   |   |
|---|---|
| ( <i>k</i> ) Code Civ. Proc., art. 44.            | Act, 1890 (53 & 54 Vict. c. 27, Imp.);        |
| ( <i>l</i> ) <i>Ibid.</i> , arts. 68 and 69.      | Howell, A., "Admiralty Law," Canada           |
| ( <i>n</i> ) 61 Vict. (Q.) c. 11.                 | (Toronto, 1893).                              |
| ( <i>o</i> ) Rev. Stat. Queb., art. 2314.         | ( <i>r</i> ) 12 Vict. c. 114 (Can.); 12 Vict. |
| ( <i>p</i> ) Can. Act, 54 & 55 Vict. c. 25, s. 3. | c. 117 (Can.), in Unrepealed Stat. of         |
| ( <i>q</i> ) See Canada Admiralty Act, 1891       | Can., pp. 1 and 41; 36 Vict. c. 61            |
| (54 & 55 Vict. c. 29), in accordance              | (Can.); 38 Vict. c. 55 (Can.); Code           |
| with the Colonial Courts of Admiralty             | Civ. Proc., arts. 65 and 66.                  |

4. *The Superior Court*, consisting of the Chief Justice and thirty-four Puisne Judges (*s*), has original jurisdiction in all suits and actions not within the exclusive jurisdiction of the Circuit Courts or the Vice-Admiralty Court (*t*).

5. *Circuit Courts*, held before Judges of the Superior Court in each judicial district, exercise—(i.) appellate jurisdiction over the *Commissioner's Court*, and over *Justices of the Peace* on questions of taxes, &c.; (ii.) final jurisdiction, exclusive of the Superior Court, (a) in suits, not being Admiralty cases, when the amount in dispute is less than 100 dollars; (b) in suits for school taxes and assessments for building churches, whatever may be the amount; (iii.) except at the chief place of each district, original jurisdiction, exclusive of the Superior Court, (a) in suits, &c., where the matter in dispute amounts to or exceeds 100 dollars, but does not exceed 200 dollars; (b) in suits for fees of office, &c., though the amount is under 100 dollars, in both cases subject to appeal (*u*). In the district of Montreal there is a special Circuit Court, composed of three Judges who are not Judges of the Superior Court. Their competence is limited to 100 dollars (*x*).

6. *Commissioners' Courts*, held before unpaid Commissioners in certain parishes, townships, &c., have jurisdiction—(i.) in personal suits up to 39 dollars where the debtor resides in the locality or district; suits for slander, paternity, seduction, &c., are excepted from their jurisdiction: (ii.) in suits for church assessments up to 39 dollars (*y*).

7. *The Recorder's Court* in certain cities has jurisdiction as to certain municipal claims, disputes between masters and servants, and lessors and lessees (*z*).

8. *Justices of the Peace* have a minor statutory jurisdiction in certain matters of assessment, wages, &c. (*a*). No action lies against a justice (*Judge of Sessions* or *Police Magistrate*) for acts done under statutory provision based on the alleged unconstitutionality of such provision (*b*).

The Courts of Criminal Jurisdiction are as follows: (1) The

(*s*) 4 Edw. VII. c. 19 (Q.).

(*y*) Code Civ. Proc., art. 59; 4

(*t*) As to appeals, see Courts 1 and 2, *supra*.

Edw. VII. c. 47 (Q.).

(*u*) Code Civ. Proc., arts. 54, 55.

(*z*) Code Civ. Proc., art. 64. See, further, 58 Vict. (Q.) c. 49, s. 25.

(*x*) 56 Vict. c. 24; 58 Vict. c. 28; 62 Vict. c. 30; 63 Vict. c. 18 (Queb.).

(*a*) Code Civ. Proc., art. 63.

(*b*) 60 Vict. (Q.) c. 53.

*Court of King's Bench* on its appeal side, as above noted (c), is the *Court for Crown Cases Reserved*, in all criminal cases (d). Cases pending before a Court of General Sessions of the Peace, in which trial by jury is allowed, may be removed into the Court of King's Bench by certiorari (e). It has original jurisdiction throughout the province over all crimes and misdemeanours (f), and one term of the Court in the exercise of this jurisdiction is held each year in each district of the province, except Quebec and Montreal (g), in which places the number of terms is fixed by the Lieutenant-Governor by proclamation (h).

(2) The Judges of the *Superior Court* may exercise the original criminal jurisdiction of the Court of King's Bench (i).

(3) *Special Commissions of Oyer and Terminer* may be issued (k).

(4) *Courts of General Sessions of the Peace* and *Recorders' Courts* have jurisdiction over all matters relating to the preservation of the peace (l), and indictable offences other than treason, murder, or certain other serious crimes (m).

(5) *Justices of Peace* and *Police Magistrates* exercise inferior statutory jurisdiction (n). An appeal lies, unless otherwise provided, from convictions by justices to the Court of King's Bench (o).

(X.) **Saskatchewan : Political History.**—The province was formed from the North-West Territories (p), and proclaimed to be part of the Dominion on September 1st, 1905.

**Law in Force.**—The law of the North-West Territories remains in force in the province (q).

**Courts.**—The Courts and administration of justice in the North-West Territories were continued in this province as in Alberta (*supra*) (q), and the two new legislatures have passed similar Acts respecting magistrates and justices of the peace.

(XI.) **Yukon Territory : Political History.**—The Yukon judicial district was constituted by proclamation, August 16th, 1897, under the North-West Territories Act (r). By the Yukon Territory Act,

(c) *Supra*, p. 230.

(d) *Crim. Code*, art. 743.

(e) *Rev. Stat. Queb.*, s. 2448.

(f) *Ibid.*, s. 2447.

(g) 61 *Vict. c.* 21 (Q.).

(h) *Rev. Stat. Queb.*, s. 2459.

(i) *Ibid.*, ss. 2452, 2453.

(k) *Ibid.*, s. 2463.

(l) *Ibid.*, ss. 2463, 2469.

(m) *Crim. Code*, art. 540.

(n) *Ibid.*, art. 782.

(o) *Ibid.*, art. 879.

(p) 4 & 5 *Edw. VII. c.* 42.

(q) *Ibid.*, s. 14, and see 6 *Edw. VII.*

19.

(r) *Rev. Stat. Can.*, c. 50.



1898 (*s*), it was declared to be a separate territory and no longer to form part of the North-West Territories. The Government is administered by a Commissioner (*t*) with the aid of a Council of not more than six persons (*u*).

• **Law in Force.**—The laws relating to civil and criminal matters and the ordinances of the North-West Territories in force at the passing of the Yukon Territory Act, June 13th, 1898, remain in force in the Yukon Territory (*x*).

**Courts.**—The Council is a Court of Record for the punishment of offences by or against its members (*y*). A superior Court of Record consisting of one or more Judges was constituted by the Yukon Territory Act, 1898, called the *Territorial Court* (*z*). An appeal lies to the Supreme Court of British Columbia in matters above the value of 500 dollars (*a*), and from thence to the Supreme Court of Canada. An appeal also lies direct from the Territorial Court to the Canadian Supreme Court (*b*). The Commissioner can refer any matter which he thinks fit to the Courts for their opinion, which for the purpose of appeal to the Canadian Supreme Court or to the Privy Council is to be regarded as a final judgment (*c*). Magistrates have been appointed to exercise jurisdiction under Part LV. of the Criminal Code, 1892 (*d*), and civil jurisdiction in actions not exceeding 300 dollars or, by consent, 500 dollars and debts to the amount of 500 dollars (*e*). An appeal lies to the Territorial Court in actions not exceeding 100 dollars, exclusive of costs (*f*).

**NEWFOUNDLAND: Political History** (*g*).—Newfoundland is the oldest colony of the British Empire. Discovered by Cabot at the end of the fifteenth century, under English auspices, it has ever since remained in the possession of this country, though the French and Spaniards have made claims especially in regard to fishing rights. As early as 1542 (*h*) the Newfoundland fisheries were recognised by the English Legislature. The colony was

(*s*) 61 Vict. c. 6.

(*t*) *Ibid.*, s. 3.

(*u*) 62 & 63 Vict. c. 11, s. 1.

(*x*) 61 Vict. c. 6, s. 9.

(*y*) Ordinance No. 15 of 1903.

(*z*) 61 Vict. c. 6, s. 10.

(*a*) 62 & 63 Vict. c. 11, s. 9. See also *McDonald v. Belcher* [1904] A. C. 429.

(*b*) 62 & 63 Vict. c. 11, s. 13.

(*c*) Ordinance No. 6 of 1906.

(*d*) 61 Vict. c. 6, s. 19 (*e*).

(*e*) *Ibid.*, s. 19 (*f*).

(*f*) *Ibid.*, s. 19 (*i*).

(*g*) An admirable history of the colony was written by Judge Prowse (London, 1895).

(*h*) 33 Hen. VIII. c. 2, continued by 7 Edw. VI. c. 11.

actually planted by Sir Humphrey Gilbert in 1583 (*i*). Since the Treaty of Utrecht, the fishing rights around the island have been a subject of constant reference (*k*) in arguments and correspondence between France and England, until outstanding questions were adjusted by the Anglo-French Convention, 1904 (*l*). A general Assembly was first summoned by Governor Cochrane in 1882 (*m*). Responsible government was established in 1855 (*n*). Use has not been made of the power given by the British North America Act (*o*) to admit Newfoundland into the Dominion.

**Labrador**, which was formerly attached to Newfoundland, was by Letters Patent of March 28th, 1876, split up between Quebec, the North-West Territories, and Newfoundland.

**Law in Force.**—The statute law of England in force in 1883, when the local legislature began to frame laws, is in force so far as it is applicable to local circumstances (*p*). The English law in relation to criminal matters comes into operation in the colony one year after its enactment (*q*).

**Court of Justice.**—The Supreme Court of Newfoundland (*r*) consists of a Chief Justice and two Puisne Judges (*s*). It is the Supreme Court of civil and criminal jurisdiction in the colony, and a Court of Oyer and Terminer and Gaol Delivery, and exercises the authorities and powers of the English Courts of common law and equity (*t*), preserving the jurisdiction conferred by the Newfoundland Act, 1824 (*u*), and the Charter of Justice of September 19th, 1825 (*x*). The Supreme Court is also a Court of Admiralty (*y*). The Court may be held by one Judge, except in cases of treason, capital felony, motions for new trials, appeals, &c., where at least two Judges are required (*z*). Where the Judges differ, a rehearing before three Judges is provided for (*z*). An Act of 1898 (c. 22) enables the Governor

(*i*) Dict. Nat. Biog., "Sir Humphrey Gilbert."

(*k*) See a series of State documents, Consol. Stat. of Newfoundland (1892), pp. 1175—1186.

(*l*) Parliamentary Paper, Cd. 1952.

(*m*) Consol. Stat. of Newfoundland (1892), p. 1119.

(*n*) "Colonial Office List," 1906, p. 275.

(*o*) 30 & 31 Vict. c. 3, s. 146.

(*p*) "Jour. Comp. Leg.," vol. ii.,

N.S., p. 284.

(*q*) Consol. Stat. of Newfoundland, c. 63, s. 1.

(*r*) 42 Vict. (Newf.) c. 29.

(*s*) *Ibid.*, s. 3.

(*t*) *Ibid.*, s. 2.

(*u*) 5 Geo. IV. c. 67.

(*x*) Stat. R. & O. Rev., 1904, vol. ix., "Newfoundland," p. 5.

(*y*) 54 Vict. (Newf.) c. 24.

(*z*) 52 Vict. (Newf.) c. 29, s. 4.

in Council to appoint an acting Judge of the Supreme Court for proceedings which, from any cause whatever, any Judge is precluded from trying. Circuits of the Supreme Courts are held periodically in the northern and southern districts (*a*). Questions arising on circuit may be reserved for decision by the Supreme Court (*b*). Appeals in civil cases lie to two or three Judges, as the case may be; and from the Supreme Court to the Privy Council where the sum at issue is above £500 (*c*). The rules of practice and procedure are similar to those in force in England (*d*).

There are—(1) a Central District Court, held in St. John's for the trial of civil causes in the district, with a right to appeal to the Supreme Court where the amount involved exceeds 40 dollars (*e*); and (2) a District Court in Harbor Grace (*f*), with summary jurisdiction in all civil cases within the jurisdiction of magistrates together with all causes up to 40 dollars, except where the title to land, &c., is involved (*g*); an appeal lies from its decision to the Supreme Court where the amount at issue exceeds 20 dollars (*h*).

Magistrates have *civil* jurisdiction up to 25 dollars (except where the title to land, &c., is involved), and also over disputes as to wages, bait, &c., and shares in seal fishery, limited in the last case to 50 dollars, and an appeal lies to the next sitting of the Supreme Court, where the amount exceeds 20 dollars (*i*); *criminal* jurisdiction in cases of battery, assault (excluding murder and rape), larceny (where the value of the property does not exceed 20 dollars), and all such cases to any amount, where the party accused consents (*k*). An appeal lies to the Supreme Court where the sentence does not exceed three months' imprisonment or does exceed 50 dollars (*l*).

(*a*) 52 Vict. (Newf.) c. 29, s. 16.

(*b*) *Ibid.*, s. 18.

(*c*) Charter of Justice, September 19th, 1825; Stat. R. & O. Rev., 1904, vol. ix., "Newfoundland," p. 5.

(*d*) See 52 Vict. (Newf.) c. 29, ss. 13 *et seq.*, and Sched. E.

(*e*) Consol. Stat. Newf., Tit. iii., c. 15, ss. 1, 9.

(*f*) Tit. iii., c. 16, s. 1.

(*g*) *Ibid.*, s. 3.

(*h*) *Ibid.*, s. 9; and see 44 Vict. (Newf.) c. 8, ss. 3, 4; and as to salaries of Judges of both Courts, 59 Vict. (Newf.) c. 33.

(*i*) 52 Vict. (Newf.) c. 25, ss. 4, 5.

(*k*) *Ibid.*, s. 8.

(*l*) *Ibid.*, s. 14.

## CHAPTER VI.

### WEST INDIES.

**BAHAMA ISLANDS : Political History.**—The Bahama Islands were granted in 1670 to a proprietary body, with full power “to make, ordeine and enact and under their seales to publish any laws and constituçons whatsoever.” The authority of this body was delegated to a Governor, but there does not appear to have been any settled system of government. New Providence was merely a shelter for pirates and disorderly people, who, after attempts by the Spaniards and French, were finally extirpated by the English in 1718, when a regular administration was formed, followed by the introduction of colonists. In 1781, the Bahamas were surrendered to the Spaniards, but they were restored to Great Britain by the Treaty of Versailles in 1783. The government of the Bahamas is modelled upon that of England, and is said not to be based upon any Charter, but to have originated in successive Royal Commissions to the Governors empowering them to convoke a General Assembly (*a*).

**Law in Force.**—The laws are English in their origin. The common law of England, unless where altered by statute, or manifestly unsuited to local conditions, is in force (*b*), and a large number of English statutes were brought into operation in the colony by the same statute that laid down this principle as to common law (*c*). The local Legislature closely follows the course of Imperial legislation on most general branches of law (*d*).

**Supreme Court.**—By the Supreme Court Act, 1896 (*e*), all existing Courts were united into the Supreme Court of the Bahama Islands, which consists of a Chief Justice alone.

(*a*) See “Colonial Office List,” 1905, p. 75; Lucas, “Hist. Geog. Brit. Colonies,” ii., pp. 75 *et seq.*, and descriptive report by Governor Sir G. T. Carter, P. P. 1904, Cd. 1985.

(*b*) 40 Geo. III. c. 2, s. 1.

(*c*) *Ibid.*, s. 2; and see, *e.g.*, No. 20 of 1899.

(*d*) See “Jour. Comp. Leg.,” ii., p. 232; N. S. i., 151; and also notes in “Jour. Comp. Leg.,” N. S., i., p. 296, on modes of legislation in the Bahama Islands, by Sir Ormond D. Malcolm, C.J.

(*e*) No. 59 Vict. c. 26.

Provision is made for the appointment of a registrar and the other usual officials, and for the enrolment of counsel and attorneys and the examination of articled clerks. The Supreme Court is a Court of Record, and has had transferred to it the jurisdiction of the old Courts (*f*), viz., the General Court, the Court of Oyer and Terminer and Gaol Delivery, the Court for Divorce and Matrimonial Causes, the Court of Bankruptcy, the Court of the Ordinary, and the Court of Common Pleas (*g*). The Supreme Court has had conferred on it the powers of the High Court of Justice in England, so far as applicable to the colony, as to all matters not within the jurisdiction of the merged Courts, and all powers exercisable by the Judges of these Courts. It has also, so far as applicable to the colony, the powers of the Lord Chancellor and of the Lord Chief Justice of England (*h*). It is made a Court of Admiralty within the Colonial Courts of Admiralty Act, 1890 (*i*), and possesses jurisdiction in lunacy (*j*). The English rules as to concurrent administration of law and equity, admission of counter-claims and third party procedure, and the prevalence of the rules of equity, in cases of conflict, over those of common law are in force (*k*). An appeal lies to the Privy Council from a final judgment of the Supreme Court on a claim of the value of £500, in other cases by leave (*l*).

Summary jurisdiction, with appropriate procedure, is conferred on the Supreme Court in civil causes where the amount in dispute, or recoverable, or (if rent) in arrear, is over £10, and does not exceed £50 (*m*). The Judge, when presiding at the trial of an information, may reserve points of law, arising at the trial, for further consideration by the Supreme Court, and appeals from the Magistrate's Court in New Providence come before the Supreme Court (*n*). The Chief Justice has power to make rules of civil and criminal procedure, and these come into operation on approval by the Governor and the Executive Council (*o*).

(*f*) As to the old Courts, see Clark, "Col. Law," p. 371.

(*g*) No. 59 Vict. c. 26, s. 32. The Governor of the Bahamas has vested in him by his Commission the Royal prerogative to remit sentences of a merely punitive character. In re The Bahama Islands [1893] A. C. 138.

(*h*) *Ibid.*, s. 32.

(*i*) 53 & 54 Vict. c. 27.

(*j*) Supreme Court Act, s. 34.

(*k*) *Ibid.*, ss. 43 *et seq.*

(*l*) *Ibid.*, ss. 41 *et seq.*

(*m*) *Ibid.*, s. 40.

(*n*) Supreme Court Act, ss. 37, 39. See Magistrates Act, 1896 (59 Vict. c. 27); and see No. 29 of 1899.

(*o*) *Ibid.*, s. 52.

**Justices.**—There are twelve resident justices, who exercise summary criminal, and in small causes civil, jurisdiction (*p*). There are also two stipendiary and circuit justices, who exercise similar original jurisdiction and hear appeals from the resident justices, except in case of appeals from the magistrate at New Providence, which lie, as above stated, to the Supreme Court (*q*).

**BARBADOS: Political History.**—The island of Barbados was first claimed as British territory by the sailors of the "Olive Blossom," which left England in 1605. At that time it was practically uninhabited, and no definite steps to settle in the island were taken until 1625. Unlike most of the neighbouring islands, it has not once changed owners, and has never been under foreign rule. It was, however, subject to considerable internal dissension arising from disputes as to ownership between grantees of the Crown, who not only urged their claims at home, but also imported bodies of settlers into the colony. The principal result of this conflict was the imposition of a duty of  $4\frac{1}{2}$  per cent. on all exports to satisfy the monetary claims of the grantees. This tax was not abolished until 1838. In 1833 the Governor of Barbados was constituted also Governor of St. Vincent, Grenada and Tobago. St. Lucia was included in 1838, and for a short time Trinidad as well. Barbados thus became, as it had been for some time in the seventeenth century, the seat of government for the Windward Islands. This arrangement continued until 1885, when it was severed from the other members of the group, and left to be, what it has practically been throughout its history, a separate item in the community of the West Indies (*r*).

**Law in Force.**—The common law of England, and such Acts of Parliament as were passed before the settlement of the island, and are applicable to its condition, are in force (*s*). Local legislation closely follows Imperial on most general branches of law (*t*).

**Courts.**—The existing judicial system is sketched under the heading "Windward Islands" (*u*).

(*p*) See Magistrates Act, 1896.

(*q*) No. 39 of 1890, ss. 2, 3, 24. The law as to police magistrates is consolidated by No. 13 of 1897, which is amended by No. 23 of 1900, and No. 5 of 1902. See also Nos. 37 of 1891 and 18 of 1896.

(*r*) Lucas, "Hist. Geog. Brit. Colonies," ii. 168 *et seq.*

(*s*) First Rep. of W. I. Commissioners, 1825, P. P. 157, p. 5.

(*t*) See "Jour. Comp. Leg.," i., 124; ii., 235; N. S. i., 153, and subsequent volumes, *sub tit.* "Barbados," in "Review of Legislation." As to the old Courts, see Clark, "Col. Law," at p. 183.

(*u*) *Infra*, p. 250.

**BERMUDA: Political History.**—The first definite connection of the Bermudas with England was through the expedition under Sir George Somers, sent out by the Virginian Company in 1609. Their charter was extended in 1612 to cover the islands, and in the same year the Company sold them to certain members of their own body, who in 1615 were incorporated by letters patent and owned the islands until 1684. Full powers of government were given to the Company, and representative institutions were established. Discontent with the administration led to the abrogation of the Charter, and the islands passed under the authority of the Crown. From the end of the eighteenth century the islands have been a station for the Imperial Navy, and for a time, at the beginning of the nineteenth century, were used as a penal settlement. The Governor is always a military officer of high rank commanding the garrison, and has the assistance of an Executive Council (*r*).

**Law in Force.**—Except in so far as amended by the local legislature, the common law, the doctrines of equity and the statutes of general application which were in force in England at the date when the islands were settled (July 11th, 1612), are declared to be in force in the islands (*w*).

**Supreme Court.**—By the Supreme Court Act, 1905, the Courts of General Assize, Chancery, Exchequer, Probate, Ordinary and Bankruptcy were consolidated in one Supreme Court (*x*), consisting of a Chief Justice and not more than two assistant justices (*y*). The jurisdiction possessed by these Courts is vested in the Supreme Court (*z*) together with the powers over infants, lunatics, &c., possessed by the Lord Chancellor of England (*a*). An appeal lies (in Chancery) to the Privy Council where the matter in dispute exceeds £300 (*b*), and to it from the Court of Errors when the issue exceeds £500 (*c*).

(*r*) Lucas, "Hist. Geog. Brit. Colonies," ii., pp. 5—24.

(*w*) No. 4 of 1905, s. 12.

(*x*) *Ibid.*, s. 2.

(*y*) *Ibid.*, s. 3.

(*z*) *Ibid.*, s. 10.

(*a*) *Ibid.*, s. 11.

(*b*) No. 25 of 1876, s. 13.

(*c*) Court Act, 1814, s. 9 (No. 50 of 1884 Revised). The Court of Errors consists of the Governor and Council or any five of them, the Governor

always to be one (*Ibid.*; Safford and Wheeler, "Privy Council Practice," p. 344, and see p. 368). Appeals to the Supreme Court are regulated by the Appeals Act, 1905 (No. 25). For the jurisdiction of justices see No. 10 of 1850; No. 37 (sess. 2) of 1890 (indictable offences); No. 11 of 1897 (protection of justices); and as to jurors see No. 39 of 1902 (the Jury Act, 1902), which consolidates the whole of the statute

**BRITISH GUIANA: Political History.**—Raleigh, in his “Discoverie of Guiana,” recorded the first English efforts to obtain a settlement in that country. For some years a connection was maintained with the country, and authoritative sanction given to it by letters patent May 6th, 1663. But in 1667 the Colony capitulated to the Dutch, and became their property by the Peace of Breda. By the Treaty of Westminster the British connection with Guiana was terminated for a long time. When war broke out in 1795 between Great Britain and Holland the settlers in Guiana capitulated without hesitation to a fleet from Barbados. By the Peace of Amiens the Colony was restored to the Dutch, but again capitulated in the following year. Demerara, Essequibo and Berbice were finally ceded to Great Britain by the Treaty signed in London in 1814. In 1881 they were united into the one Colony of British Guiana (*d*).

**Law in Force.**—The time of the occupation of the Colony in 1803 was prior to the introduction of the Codes in Holland, and therefore, under the capitulation (*e*), the common law of the Colony was Roman-Dutch. The laws in force in 1803, and guaranteed as such by the capitulation, were “the old law of Holland, peculiar vernacular laws, and the Roman law in *subsidiū*” (*f*). The English law as to merchant shipping, &c., was introduced by Ordinance No. 6 of 1864; trial by jury by Ordinance No. 26 of 1846 (*g*). The statute law consists of regulations, Orders in Council, Ordinances (by far the most numerous), and a few Acts of Parliament, expressly made applicable to the Colony (*h*).

**Courts.**—The *Supreme Court* of British Guiana is formed by the union and consolidation of the Supreme Court of Civil Justice of British Guiana and the Supreme Court of Criminal Justice of British Guiana (*i*), is a superior Court of Record (*j*), and has all

law of the Colony in regard to jurors and juries.

(*d*) Lucas, “Hist. Geog. Brit. Colonies,” ii., pp. 263—280; and see *supra*, p. 118.

(*e*) Hertslet’s “Treaties,” vol. i. at p. 367.

(*f*) Report of the West Indian Commissioners, relating to British Guiana (April 14th, 1828), P. P. 577 p. 3.; and see *supra*, p. 125.

(*g*) See now No. 19 of 1893.

B.C.L.

(*h*) The statute law of the Colony was revised under the authority of the Statute Law Revision Ordinance, No. 7 of 1904. For the English Acts applicable to the Colony, see the Index to the “Laws of British Guiana,” ed. 1905, *tit.*, “Act of Parliament.”

(*i*) No. 7 of 1893, and No. 17 of 1901. As to the former Courts, see Clark, “Colonial Law,” p. 244.

(*j*) *McDermott v. British Guiana* (Judges of) (1868), L. R. 2 P. C. 341.



the powers (a) incident to such a Court, according to English law, and (b) belonging, when the Colony came under the dominion of the British Crown, to the High Court of Holland, or the National Court of Holland, or other "Superior Courts" in Holland or the Colony (k). It consists of the Chief Justice and two Puisne Judges, holding office during pleasure (l). It is a Colonial Court of Admiralty within the meaning of the Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. c. 27) (m), has a special limited civil jurisdiction (n), in addition to ordinary civil jurisdiction with a procedure like that of the High Court in England and appellate jurisdiction over single Judges and magistrates (o). An appeal lies from single Judges to the Full Court (p), which must for this purpose consist of the three Judges (q). In any other case, any two Judges are sufficient to constitute the Full Court (q). Criminal jurisdiction is exercised, as in England, by single Judges (r).

An appeal lies, in civil cases, to the Privy Council where the interest at stake amounts to, or is of the value of, £500 sterling (s).

*Magistrates' Courts.*—There are Magistrates' Courts in every district, with petty civil and criminal jurisdiction similar to that of magistrates in England. An appeal lies from their decisions to the Supreme Court (t). Travelling magistrates may be appointed to these Courts by Ordinance No. 17 of 1905.

(k) No. 7 of 1893, s. 3 (2).

(l) *Ibid.*, s. 4 (1), 9 (1).

(m) *Ibid.*, s. 34.

(n) *Ibid.*, s. 30. By that section the Court has a limited civil jurisdiction conferred by the principal Ordinance in the following actions and matters: (a) Actions of debt or damages up to \$2,500; (b) actions for recovery or transport of immovable property, specific chattel or penalty, up to \$2,500; (c) actions for enforcing mortgage claims up to \$2,500; (d) opposition suits, up to \$2,500; (e) actions of interdict, mandament, mandamus, appointment of receiver, up to \$2,500; (f) actions of partition, or sale, up to \$5,000; (g) administration actions, up to \$5,000; (h) actions for dissolution of partnership, up to \$5,000; (i) actions against agents for an account, up to

\$2,500; (j) counterclaims in respect of any of the foregoing matters, up to the same amount as actions; (k) actions for debts which, by the Rules of Court, may be recovered by summary process, but if leave to defend be given, then up to \$2,500; (l) upon consent of parties in writing, filed in the registry, the Court may exercise jurisdiction up to any amount.

(o) No. 7 of 1893, s. 33, and No. 13 of 1893.

(p) *Ibid.*, s. 39 (1).

(q) *Ibid.*, s. 12 (1).

(r) *Ibid.*, s. 15.

(s) Order in Council of June 20th, 1831 (Stat. R. & O. Rev., 1904, vol. vi., "Judicial Committee," p. 18).

(t) No. 7 of 1893, s. 33, and No. 13 of 1893.

**BRITISH HONDURAS. Political History.**—The beginning of the Colony of British Honduras may be traced to a settlement sent out in 1680 by a Chartered Company. Its affairs were then regulated by the Governor of Jamaica. In 1739 the King of the Mosquitos concluded a treaty "resigning his country to Great Britain" (*u*). By the Treaty of Paris, in 1763, England undertook to demolish all the fortifications erected in the Bay of Honduras and other places of the territory of Spain in that part of the world (*v*). The Convention of London, signed in 1786, contained a further undertaking that "His Britannic Majesty's subjects and the other colonists who have hitherto enjoyed the protection of England, shall evacuate the country of the Mosquitos, as well as the continent in general and the islands adjacent without exception" (*w*). The settlers remained, however, and continued to cut wood. In 1798, with English assistance, they succeeded in overcoming the Spaniards, and the Colony gained permanently the right to be called British Honduras (*x*). By letters patent in 1862 the settlement was declared to be "the Colony of British Honduras," under the administration of a Lieutenant-Governor responsible to the Governor of Jamaica. It became a Crown Colony in 1870, and was made independent of Jamaica by letters patent in 1884 appointing a Governor of British Honduras (*y*).

**Law in Force.**—The common law of England and all Imperial statutes in abrogation or derogation, or in any way declaratory, of the common law are in force in the Colony, so far as the local jurisdiction of the Courts and local circumstances permit (*z*). The colonial enacted law consists exclusively of the ordinances passed by the local Legislative Council (*a*).

**Courts.**—The *Supreme Court* is constituted at present of the Chief

(*u*) Lucas, "Hist. Geog. of Brit. Colonies," ii., p. 299.

(*v*) Hertale's "Treaties," ii., p. 235.

(*w*) *Ibid.*, p. 245.

(*x*) As to the history of the settlement of the Colony, see Att.-Gen. for British Honduras *v.* Bristowe (1880), 6 A. C. 143; Hodge *v.* Att.-Gen. for British Honduras (1864), 2 Moo. P. C. (N. S.) 325.

(*y*) Stat. R. & O. Rev. 1904, vol. ii., "British Honduras," pp. 1 *et seq.*

(*z*) "Consol. Laws," Pt. iv., c. 7, s. 3. Annexed to the "Consolidated Laws" there is a schedule showing the Imperial Acts probably in force in the Colony.

(*a*) "Jour. Comp. Leg.," i., p. 368. See *Jex v. McKinney* (1889), 14 A. C. 77, as to the introduction of English law into the Colony. In that case the English Mortmain Act (9 Geo. II. c. 36) was held inapplicable.

Justice alone, although there is power to appoint other Judges (*b*). It possesses the jurisdiction of the corresponding English Courts of Common Law (including gaol delivery), Chancery, Probate (*c*), also jurisdiction in insolvency (*d*), escheat (*e*), infancy and lunacy (*f*), and law and equity are to be administered concurrently (*g*). The Supreme Court exercises an appellate jurisdiction over the inferior Courts (*h*). An appeal lies to the Privy Council either directly, or through the Supreme Court of Jamaica (*i*). There are also District Courts with jurisdiction to determine summarily all personal actions where the amount claimed does not exceed 100 dollars; but actions of ejectment, libel, false imprisonment, malicious prosecution, seduction, criminal conversation, or breach of promise of marriage are excepted (*j*).

**JAMAICA: Political History.**—The island of Jamaica was visited and ravaged by English forces in 1597 and again in 1635, and was annexed to the British dominions about 1655. With the sanction of Charles II., a form of civil government was established in 1661, and in the following year Lord Windsor was sent out as Governor. He had the assistance of a Council, and was directed to call together a legislative assembly. The Treaty of Madrid in 1670 finally confirmed the British occupation of the island. For a long time the position of the Maroons was a cause of dissension until, in 1842, an Act was passed to confer upon them all the rights, privileges, and immunities of British subjects. A new constitution was granted in 1854, but owing to the rebellion of the blacks in 1865, the island was made a Crown Colony, with a single legislative chamber, by Order in Council, 11th June 1866. The present constitution, consisting of a Governor, a Privy Council, answering to an Executive Council, of ex-officio and nominated members, and a Legislative Council, was introduced in 1884 (*k*).

**Law in Force.**—The law in force consists—(1) of the common law of England, introduced in 1655; (2) of ordinances, the statute

- (*b*) "Consol. Laws," Pt. v., c. 8, 1881 (44 & 45 Vict. c. 36). Order in Council of November 30th, 1882, Stat. R. & O. Rev., 1904, vol. i., *tit.* "British Honduras," p. 4; "Consol. Law," *ad loc. cit.* ss. 54—61.
- (*c*) *Ibid.*, s. 29.
- (*d*) *Ibid.*, s. 30.
- (*e*) *Ibid.*, s. 32.
- (*f*) *Ibid.*, s. 34.
- (*g*) *Ibid.*, s. 35.
- (*h*) *Ibid.*, s. 31.
- (*j*) No. 5 of 1901; No. 11 of 1899.
- (*k*) Lucas, "Hist. Geog. Brit. Colonies," ii. pp. 95—111.
- (\*) B. Hond. (Court of Appeal) Act,

law of England up to 1655, and Orders in Council (*l*). It has been held that Jamaica is a settled and not a conquered Colony (*m*).

**Courts.**—The *Supreme Court*, consolidating the Supreme Court of Judicature, High Court of Chancery, Incumbered Estates' Court, Court of Ordinary, Court for Divorce and Matrimonial Causes, Chief Court of Bankruptcy, and Circuit Courts (*n*), consists of a Chief Justice and two Puisne Judges (*o*), and has all the jurisdictions of the consolidated Courts (*p*). An appeal lies in civil matters from a single Judge, or from the Court of the Resident Magistrate (*q*), to the Full Court (*r*), *i.e.*, the Chief Justice and the two Puisne Judges sitting together, or any two Judges, if necessary, owing to pressure of business (*s*). There is an appeal in criminal cases to the Full Court, or Court sitting as a Circuit Court (*t*). An appeal lies to the Privy Council, where the amount in dispute exceeds £500 (*u*).

**Magistrates' Courts.**—In each of the fourteen parishes of the island (*v*), there is a Resident Magistrate's Court, held before a resident magistrate with equity jurisdiction up to the limit of £200 (*w*), probate and administration jurisdiction up to £300 (*x*), and common law jurisdiction up to £50 (*y*). An appeal lies to the Full Court in civil cases on questions of law (*z*), but not from the judgment of the magistrate as to the value of real and personal property for the purpose of determining jurisdiction, or on the ground that the proceeding might have been taken in some other Resident Magistrate's Court (*a*). An appeal lies in cases of indictable offences and summary jurisdiction to the Supreme Court (*b*).

**Turks and Caicos Islands.**—The Turks and Caicos Islands were at first included under the government of the Bahamas, but in 1848 were constituted a separate Colony. By an Imperial Act in 1873

(*l*) 1 Geo. II. c. 1, s. 22, continued by 8 Vict. c. 16, s. 7; "Jour. Comp. Leg.," i., p. 161; and First Report of W. I. Commissioners, 1827, P. P. 559, pp. 9 *et seq.*

(*m*) *Beaumont v. Barrett* (1836), 1 Moo. P. C. at p. 75; but see *Phillips v. Eyre* (1870), L. R. 6 Q. B. at p. 18.

(*n*) No. 24 of 1879, s. 5.

(*o*) *Ibid.*, s. 6.

(*p*) *Ibid.*, s. 20.

(*q*) No. 43 of 1887, s. 2.

(*r*) No. 24 of 1879, s. 32.

(*s*) *Ibid.*, s. 27.

(*t*) *Ibid.*, s. 32, and see No. 25 of 1872.

(*u*) Order in Council of April 14th, 1851; Stat. R. & O. Rev., 1904, vol. vi., "Judicial Committee," p. 41.

(*v*) No. 36 of 1898, s. 4.

(*w*) No. 43 of 1887, s. 99.

(*x*) *Ibid.*, s. 102, amended by No. 16 of 1891, s. 5.

(*y*) No. 43 of 1887, ss. 66—71.

(*z*) *Ibid.*, s. 235.

(*a*) *Ibid.*, s. 237.

(*b*) *Ibid.*, s. 270; and see No. 16 of 1891, s. 8.

authority was given to annex the islands to Jamaica (c), and by an Order in Council, August 4th, 1873, they were declared to form part of the Colony (d). The Supreme Court, with which the former Court of Ordinary was consolidated by Ordinance No. 5 of 1849, while the powers of the former Court of Chancery were transferred to it by No. 1 of 1876, is held before a single Judge, exercises supreme civil and criminal jurisdiction within the Colony, and has the powers of the English Common Law Courts (e). Bi-monthly sittings of the Court are held at Grand Turk (f). The jurisdiction of the Supreme Court of Jamaica in divorce and matrimonial causes was extended to the islands in 1881 (g). An appeal lies to a Court composed of members of the Legislative Board (h). Assistant Commissioners act as police magistrates in their districts (i).

**Cayman Islands.**—By an Act (j) of the Imperial Parliament in 1863, authority was given to the Jamaica legislature to enact laws for the good government of the islands, and the magistrates were authorised to promulgate regulations with the assent of the Governor of Jamaica. The power and jurisdiction of the Governor and Supreme Court of Jamaica were also extended so as to include the islands. There were, therefore, Imperial Statutes, laws made by the Jamaican legislature and local laws in force in the island, which were specified at length in the Cayman Islands Government Law, 1893 (k). By the same law, the Governor of Jamaica was authorised to appoint a Judge of the Grand Court. The Court has civil and criminal jurisdiction as formerly exercised by the Supreme Court of Jamaica, which is now the Court of Appeal from the local court (l). Under Ordinance No. 34 of 1898, the Governor of Jamaica appoints a Commissioner for these islands, which have a separate legislature.

**TRINIDAD: Political History.**—The island of Trinidad appears to have been included in the grant to Philip, Earl of Montgomery,

(c) 36 Vict. c. 6.

(d) Stat. R. & O. Rev., 1904, vol. vi., "Jamaica," p. 1.

(e) No. 5 of 1903, s. 4.

(f) *Ibid.*, ss. 15, 16.

(g) No. 27 of 1881.

(h) *Ibid.*, s. 18; and see Frith v. Frith [1906] A. C. 254.

(i) See No. 4 of 1899, consolidating the law relating to magistrates and procedure in their Courts.

(j) 26 & 27 Vict. c. 31.

(k) No. 37 of 1893 amended by No. 10 of 1894.

(l) See No. 18 of 1894, amended by No. 18 of 1896.

in 1628, and there is evidence of its being in the hands of other English noblemen; but there being no particular desire to retain it, possession of the island was secured by Spain, though both the Dutch and French made raids upon it at different times. Spain continued to hold the island till the end of the eighteenth century, when it was taken by Great Britain, and was ceded to her by the Peace of Amiens in 1802 (*m*). A Legislative Council was constituted in 1831.

**Law in Force.**—On the cession of Trinidad, the Spanish law was in force in the island, but it has since been gradually displaced by local enactments, either introducing portions of the law of England, or framed on the lines of English law, and it now governs only (a) the construction of deeds made before June 10th, 1844: (b) the institution of heirs in cases of birth before March 12th, 1846: (c) dispositions of property by will made before June 10th, 1844: (d) the forms of wills made before January 13th, 1845: (e) intestacy and succession to persons before March 12th, 1846: (f) the right of a person born out of wedlock before March 12th, 1846, to take as next of kin of his mother or of his mother to take as his next of kin (*n*).

**TOBAGO: Political History.**—The island of Tobago was ceded to England by the Treaty of Paris of February 10th, 1763 (*o*), and was united, in virtue of a Proclamation of October 7th, 1763 (*p*), together with the Grenadines, Dominica, and St. Vincent, under the government of Grenada, though with a Legislative Assembly of its own. It was retroceded to France by the Treaty of Versailles of September 3rd, 1783 (*q*), but was re-taken by England on April 15th, 1793.

The Colony is said to have received, in 1794, during the administration of Governor Ricketts, a constitution from England, and is supposed to have adopted with it, or at the period of the cession, all the Acts of Parliament of Great Britain suited to its condition and circumstances. The Charter of the constitution is understood to have been lost, but its substance appears sufficiently from the preamble of the Act of Assembly of February 21st, 1794 (*r*).

(*m*) Lucas, "Hist. Geog. Brit. Colonies," ii., pp. 235 *et seq.*

(*n*) "Jour. Comp. Leg.," ii., p. 293, vii., N. S. p. 593, and see Report of W. I. Commissioners, P. P. 551, p. 6, for historical information as to the old law.

(*o*) Ann. Reg., 1762, p. 233; see art. 9.

(*p*) Ann. Reg., 1763, p. 209; see art. 4.

(*q*) Ann. Reg., 1783, p. 324; see art. 7.

(*r*) Clark, "Colonial Law," p. 227.

Tobago was ceded once more to France in 1802 by the Treaty of Amiens (*s*), but was recaptured by the English in July, 1803 (*t*), and finally ceded to England by the Treaty of Paris of May 30th, 1814 (*u*).

From 1794 to 1802, and from 1803 to 1833, Tobago possessed a separate and distinct Government unconnected with any other colony. In 1833 it was united, together with Grenada and St. Vincent, to Barbados (*r*), but continued to possess a separate House of Assembly. By an Act passed by the colonial Legislature of Tobago in November, 1841, and confirmed by Order in Council, "so much of the common law and all such statutes and parts of the public and general statute laws of England, and of the United Kingdom of Great Britain and Ireland as are, or shall be or become, applicable and suitable to the circumstances, and population of the Colony" (*v*) was declared to be in force in Tobago (*x*).

In 1876 Tobago, in common with St. Vincent and Grenada, surrendered its constitution for one of the Crown Colony type (*y*), and by an Order in Council of February 7th, 1877, made in pursuance of the St. Vincent, Tobago, and Grenada Constitution Act, 1876 (39 & 40 Vict. c. 47), a Legislative Council, to consist of not less than three persons designated by Her Majesty, was established in the island.

**Law in Force.**—The law in force in the island consists of the common law of England and local ordinances, some of which introduced English statute law (*z*).

**TRINIDAD AND TOBAGO** were united by Order in Council of November 17th, 1888, made in pursuance of the Trinidad and Tobago Act, 1887 (*a*).

(*s*) March 25th, 1802; Ann. Reg., 1802, p. 608; see art. 3.

(*t*) Ann. Reg., 1803, p. 535.

(*u*) Herts. "Treaties," i., p. 251; see art. 8.

(*v*) Commission of February 13th, 1833, constituting Sir Lionel Smith Governor of these three islands; Clark, "Colonial Law," p. 123.

(*w*) See *Colonial Bank v. Warden* ((1846), 5 Moo. P. C. 340), in which the question was raised, but not decided, whether the Interpleader Act,

1830 (1 & 2 Will. IV. c. 58), extends to the Colonies.

(*x*) For full information as to the old laws and Courts of Tobago, see First Report of W. I. Commissioners, 1825, P. P. 157, p. 71.

(*y*) See Hans., "Parl. Debs.," vol. 230, col. 1039.

(*z*) "Jour. Comp. Leg.," ii., pp. 291—295.

(*a*) 50 & 51 Vict. c. 44, which repealed 39 & 40 Vict. c. 47, so far as it related to Tobago.

**Courts: Supreme Court.**—The Supreme Court of Trinidad and Tobago (*b*) is a Superior Court of Record (*c*), consisting of a Chief Justice and two Puisne Judges (*d*). Any two Judges constitute the Full Court (*e*). The Supreme Court has the general jurisdiction of the High Court of Justice in England, excluding that of the Court of Admiralty (*f*), and the jurisdiction of the Supreme Court in Lunacy (*g*). The Judges have power to reserve criminal cases for the Full Court (*h*). An appeal lies to the Privy Council in civil cases from judgments for sums above £500 (*i*). Appeals lie to the Full Court from decisions of a single Judge—not in criminal proceedings (*k*)—and from decisions of magistrates (*l*). Sittings of the Supreme Court for the trial of criminal and civil cases and for hearing appeals from decisions of magistrates are held before a single Judge in Tobago at least three times a year, and, except in cases of appeals from magistrates, an appeal lies to the Full Court from the decisions of single Judges so sitting (*m*). All indictments for offences committed in Tobago are to be tried in Tobago, subject to the power of the Judge, where a fair trial cannot be had in Tobago, to remove the trial to the Port of Spain (*n*).

The Supreme Court has summary jurisdiction, at law, in debt up to £200, recovery of the possession of land up to £500 (*o*), and in equity, creditors' actions, trusts, specific performance, &c., up to £200 (*p*). This is the civil jurisdiction which, as above mentioned, the Supreme Court exercises in Tobago; all proceedings within its ordinary jurisdiction arising in Tobago are tried at Port of Spain, subject to the power of the Court to remove any particular action to Tobago (*q*). Civil cases tried in Tobago by the Supreme Court in the exercise of its summary jurisdiction are tried without a jury (*r*). Provision is made for juries in criminal cases (*s*).

(*b*) See Order in Council November 17th, 1888; Stat. R. & O. Rev., 1904, vol. xiii., "Trinidad and Tobago," p. 4.

(*c*) No. 28 of 1879, s. 4.

(*d*) *Ibid.*, s. 5, and see No. 21 of 1900.

(*e*) *Ibid.*, s. 6.

(*f*) *Ibid.*, s. 12.

(*g*) *Ibid.*, s. 13.

(*h*) *Ibid.*, ss. 24–26; and see Nos. 12 of 1884 and 20 of 1896.

(*i*) Order in Council of June 30th, 1831; Stat. R. & O. Rev., 1904, vol. vi.,

"Judicial Committee," p. 18.

(*k*) No. 28 of 1879, s. 22.

(*l*) *Ibid.*, s. 23.

(*m*) No. 34 of 1898, s. 2.

(*n*) *Ibid.*, s. 3.

(*o*) No. 19 of 1901, repealing No. 28 of 1879, s. 30.

(*p*) *Ibid.*, s. 31.

(*q*) No. 34 of 1898, s. 8.

(*r*) *Ibid.*, s. 9.

(*s*) *Ibid.*, s. 10; and see now No. 16 of 1901.



*Petty Civil Courts.*—Petty Civil Courts (*t*) are established in the districts into which the island of Trinidad is divided (*u*). These are held before the Puisne Judges in the district of Port of Spain, and stipendiary justices in their several districts (*x*), with petty debt jurisdiction up to £10 (*y*), there being the usual exception of cases involving the title to land, &c. (*z*). No appeal lies from the decision of the Judge exercising this jurisdiction (*a*).

*Justices.*—Stipendiary justices appointed by the Governor (*b*), with special districts assigned to them (although each has jurisdiction throughout the Colony) (*c*), possess summary jurisdiction over offences on the high seas punishable on summary conviction (*d*), and the powers vested by common law or statute in one justice or two or more justices (*e*). Ordinance No. 47 of 1895 is a consolidation of the law of procedure before justices. An appeal lies to the Supreme Court—(i.) where the Court refuses to convict, or make an order, at the instance of the complainant; (ii.) or, at the instance of the defendant, where an order is made involving a penalty of £5, or liability to imprisonment (*f*).

Tobago was, by Order in Council of October 20th, 1898 (brought into operation as from January 1st, 1899, by a Proclamation of the Governor, dated December 8th, 1898), made a ward (*g*) of the united colony of Trinidad and Tobago, and the post of warden and magistrate was created.

**WINDWARD ISLANDS** (including Grenada and the Grenadines, St. Lucia, and St. Vincent and for juridical though not for political purposes Barbados). There is a common Court of Appeal for the group constituted under the Windward Islands Act, 1850 (*h*), and consisting of the Chief Justices of Barbados, Grenada, St. Lucia, and St. Vincent (*i*). Tobago, which was included in the original group, is now a ward of Trinidad (see TRINIDAD AND TOBAGO). An appeal

(*t*) No. 37 of 1901, amended by Nos. 4 of 1889 and 11 of 1891.  
No. 26 of 1904.

(*u*) *Ibid.*, ss. 4, 5.

(*x*) *Ibid.*, ss. 8, 9.

(*y*) *Ibid.*, s. 13.

(*z*) *Ibid.*, s. 14.

(*a*) *Ibid.*, s. 36, and see s. 38.

(*b*) No. 47 of 1895, s. 3. See Att.-Gen. for Trinidad and Tobago v. Eriché [1893] A. C. 518, a case decided under

(*c*) *Ibid.*, s. 4.

(*d*) *Ibid.*, s. 8.

(*e*) *Ibid.*, s. 9.

(*f*) *Ibid.*, s. 121. As to Tobago, see s. 129.

(*g*) As to wardens, see No. 13 of 1852, and amending Acts.

(*h*) 13 & 14 Vict. c. 15.

(*i*) No. 11 of 1890, s. 2.

lies from the Court of Appeal to the Privy Council, where the sum involved exceeds £800 (*j*).

**Barbados (*k*).**—The political history and law in force in Barbados have been already stated (*l*).

**Courts.**—(I.) An appeal lies to the *Court of Appeal for the Windward Islands* against any final judgment, &c., of the Chief Justice of Barbados in the exercise of his legal, equitable, or ecclesiastical jurisdiction (*m*). No judgment is “final” which does not “necessarily operate as between plaintiff and defendant as a determination of the plaintiff’s cause of action” (*n*).

(II.) *Courts presided over by the Chief Justice.*—(a) *Court of Common Pleas* (*o*), with the jurisdiction of the English Courts of Common Pleas, Queen’s Bench, and Exchequer as at June 29th, 1853 (*p*). An appeal lies from it to the Windward Islands Court of Appeal (*ubi supra*). (b) *Court of Chancery* (*q*).—An appeal lies to the Windward Islands Court of Appeal (*r*). (c) The *Court of Ordinary* (*s*) has practically the same jurisdiction as the Probate Division in England (*t*). An appeal lies to the Windward Islands Court of Appeal (*u*). (d) The *Court of Grand Sessions* (*x*) is held at least three times a year (*y*), and has Vice-Admiralty criminal jurisdiction (*z*). Questions of law in cases at Grand Sessions may be reserved for the Windward Islands Court of Appeal (*a*). (e) *Court of Error*.—See (a) “Court of Common Pleas,” *supra*; and No. 1 of 1891, s. 51. As to appeals to the Court of Error from the Assistant Court of Appeal, see (III.), *infra*.

(III.) *The Assistant Court of Appeal*, consisting of three Puisne Judges (*b*), has original jurisdiction in debt from £20 up to £50 (*c*), or a balance not exceeding £50 after an admitted set-off (*d*), and in damages between £10 and £50, but without cognisance of actions

(*j*) Orders in Council of March 3rd, 1859, and April 20th, 1883; Stat. R. & O. Rev., 1904, vol. xiii., “Windward Islands,” p. 7. See also 52 & 53 Vict. c. 33.

(*k*) Kindly revised by Sir W. H. Greaves, Chief Justice of Barbados.

(*l*) See p. 239.

(*m*) No. 2 of 1899, s. 3 (1).

(*n*) *Ibid.*, s. 3 (2).

(*o*) No. 44 of 1891.

(*p*) *Ibid.*, s. 2.

(*q*) No. 5 of 1906.

(*r*) No. 1 of 1857, s. 8.

(*s*) No. 40 of 1891.

(*t*) *Ibid.*, s. 2.

(*u*) *Ibid.*, s. 7; and see No. 17 of 1895.

(*x*) No. 43 of 1891.

(*y*) *Ibid.*, s. 3.

(*z*) *Ibid.*, ss. 15, 18 (8).

(*a*) No. 1 of 1857, s. 11.

*b*) No. 29 of 1900, s. 3.

(*c*) *Ibid.*, s. 7 (1).

(*d*) *Ibid.*, s. 7 (2).

in which the validity of a devise, bequest, or limitation under a will or settlement is disputed, or of actions of libel, slander, &c. (e) ; original jurisdiction in ejectment up to £50 or £10 annual value (f) even though title comes in question (g) ; and as to the recovery of premises where the rent does not exceed £100 (h). The Assistant Court of Appeal has the equitable jurisdiction of the Court of Chancery for the island up to £100 in administration, foreclosure, specific performance, partnership, and partition suits (i) ; and jurisdiction to grant administration if the personal estate is under £50 (k). It exercises appellate jurisdiction over police magistrates and Petty Debt Courts (l). An appeal lies to the *Court of Error* (m) from decisions of the Assistant Court of Appeal on points of law in the exercise of the appellate (n) or original legal (o) jurisdiction ; and to the *Court of Chancery* from its decisions on points of law or equity on any matter within its equitable jurisdiction (p).

(IV.) *Petty Debt Courts* are held at Bridgetown before a Judge of Petty Debt Court (q), and elsewhere before rural police magistrates (r) ; with jurisdiction in debt up to £20, and in damages up to £10, with the usual exceptions (s). An appeal lies to the Assistant Court of Appeal (see (III.), *supra*).

(V.) *Police Magistrates* in each of five districts into which the island is divided (t) exercise summary jurisdiction in cases of larceny, embezzlement, &c., where the value of the property does not exceed £1 (u). An appeal lies to the Assistant Court of Appeal (x), which can hear the case and summon additional witnesses, upon points of law or fact.

**Grenada (y) : Political History.**—Although the island of Grenada was included in the Carlisle grant of 1627, no definite settlement

(e) No. 29 of 1900, s. 7 (1).

(f) *Ibid.*, s. 10.

(g) *Ibid.*, s. 11.

(h) *Ibid.*, s. 12.

(i) *Ibid.*, s. 14.

(k) *Ibid.*, s. 16.

(l) *Ibid.*, ss. 51—65.

(m) Composed of the Chief Justice :  
No. 29 of 1900, s. 67.

(n) *Ibid.*, s. 52.

(o) *Ibid.*, s. 53. And as to powers of Court of Error, see ss. 59—62, and No. 1 of 1899, ss. 22, 23.

(p) No. 1 of 1891, ss. 63—69 ; and see No. 1 of 1899, s. 24.

(q) No. 39 of 1890, s. 3.

(r) *Ibid.*, s. 2.

(s) *Ibid.*, s. 24.

(t) No. 13 of 1897, s. 3, amended by No. 23 of 1900 and No. 5 of 1902. See No. 37 of 1891 and 18 of 1896.

(u) No. 13 of 1897, ss. 8 *et seq.*

(x) See (III.), *supra*.

(y) Kindly revised by Sir J. T. Hutchinson, sometime Chief Justice of Grenada, now Chief Justice of Ceylon.

appears to have been made by the English, and it became French property. It continued a French possession until the war between France and Great Britain, when it capitulated to a British force, and by Art. ix. of the Treaty of Paris (1763) "the islands of Grenada and of the Grenadines" were assigned to Great Britain (z). After being again occupied by the French in 1779, the island was finally ceded to Great Britain by the Peace of Versailles in 1783 (a). In 1876, the Legislative Assembly presented an address to the Queen, in which they expressed themselves as "satisfied that it is expedient that the entire control and government of this island and its dependencies should be vested in your Majesty." They passed an Act to repeal the constitution and extinguish their own existence. To remove any doubts as to the validity of their action, an Act was passed by the Imperial Legislature (b). The government was thereupon united under one governor with the other Windward Islands.

**Law in Force.**—The law in force in Grenada consists of—(1) the common law of England introduced by Royal Proclamations of December 19th, 1764, and January 10th, 1784 (c); (2) local ordinances and certain letters patent and Orders in Council (d).

**Courts.**—(I.) *The Supreme Court* (e) is a Superior Court of Record (f) held before the Chief Justice alone, and vested with all the jurisdiction of the English High Court of Justice, except divorce (g). It has cognisance of all offences committed in the Colony or within a marine league of its coasts (h), has the lunacy jurisdiction of the Lord Chancellor (i), and is a Colonial Court of Admiralty (k). The Supreme Court sits for the trial of criminal cases not less than three times a year (l). An appeal lies to the Court of Appeal for the Windward Islands which sits in Grenada (m) and thence to the Privy Council on the conditions stated above (n). The Supreme Court exercises summary jurisdiction in cases prescribed by the

(z) "Parliamentary History," vol. xv., 1297. Leg., i., p. 151.

(a) Lucas, "Hist. Geog. Brit. Colonies," ii., 214. (e) No. 28 of 1896.

(b) 39 & 40 Vict. c. 47. (f) *Ibid.*, s. 3.

(c) Laws of Grenada (1897) pp. 964, 965. (g) *Ibid.*, s. 6.

(d) As to the extent to which English law was adopted in the island, see (h) *Ibid.*, s. 7.

Att.-Gen. v. Stewart (1817), 2 Mer. 143, and valuable note in "Jour. Comp. (i) *Ibid.*, s. 8.

(k) *Ibid.*, s. 9.

(l) *Ibid.*, s. 18.

(m) No. 59 of 1857, s. 1.

(n) *Supra*, p. 251.

rules: Debt or damages up to £50 (*o*); ejectment where the annual rental or value does not exceed £20 (*p*); claims of rent by creditors, &c., and as to trusts, foreclosure, &c., up to £300 (*q*).

(II.) *Police Magistrates* (*r*) in the various districts (*s*) have civil jurisdiction in debt or damages up to £10; in actions for trespass to land where no question of title is raised and the damages claimed are not more than £2; in all matters in which jurisdiction is by law given to police magistrates or justices of the peace (*t*); and criminal jurisdiction in summary cases (*u*), to investigate all indictable offences (*x*), and as to offences in colonial waters (*y*). An appeal lies to the Supreme Court (*z*). Monthly returns of criminal cases are forwarded by the magistrates to the Chief Justice (*a*), who may also require a magistrate to state a case for the decision of the Supreme Court (*b*).

**St. Lucia (*c*): Political History.**—The history of St. Lucia is the record of a constant contest between France and England for its possession from the early days, when both countries first sent out colonists. In 1641 the natives, with the sympathy, if not active assistance, of the French, rose in rebellion, killed the governor, and drove the English colonists from the island. A few years later the island was occupied by the French, but Lord Willoughby, the English Governor of Barbados, with the assistance of his own islanders, overpowered them in 1664. Another attempt was made by the French in 1718, but abandoned on account of the protest from England that the island was included in the commission of the Governor of Barbados. When the English, however, attempted to land an expeditionary force a few years later, France made a similar claim and protest, with the result that both countries in 1790 sent out instructions for the evacuation of the island by their respective forces. A declaration that the island was neutral, and belonged to the Caribs, was confirmed by the Peace of Aix-la-Chapelle in 1748. In the course of the war between the two

(*o*) No. 16 of 1882, Code of Civil Procedure, s. 394 (1).

(*p*) *Ibid.*, s. 394 (2).

(*q*) *Ibid.*, s. 394 (3), (7).

(*r*) No. 6 of 1896.

(*s*) *Ibid.*, s. 4.

(*t*) *Ibid.*, s. 13.

(*u*) *Ibid.*, s. 10.

(*x*) *Ibid.*, s. 11.

(*y*) *Ibid.*, s. 12.

(*z*) *Ibid.*, ss. 26—39.

(*a*) No. 27 of 1896.

(*b*) *Ibid.*, s. 3.

(*c*) Kindly revised by Mr. E. Bateson, sometime Att.-Gen. of St. Lucia.

countries, St. Lucia capitulated to the English in 1762, but was restored to France by the Peace of Paris in the following year. Again it was taken by Rodney in 1778, but restored to France by the Peace of Versailles in 1783. The English captured the island in 1794, and succeeded in suppressing the insurrection stirred up by a partisan of Robespierre among the islanders, who had imbibed revolutionary ideas. By the Peace of Amiens, the island was restored to France for the last time, and it was finally ceded to England by the Peace of 1814. St. Lucia was added to the Windward Islands Government in 1838, and united with St. Vincent and Grenada under one administration in 1885 (*d*).

**Law in Force.**—The *Coutume de Paris* is in force in St. Lucia except so far as it has been superseded by later legislation (*e*). The law is contained in four Codes—Civil, Civil Procedure, Criminal and Criminal Procedure—and the Ordinances passed by the Legislative Council (*f*). By the Civil Code (*g*) the laws in existence at the time of its coming into force are abrogated in all cases in which there is a provision having that effect expressly or by implication; in which such laws are contrary to or inconsistent with any provision; or in which express provision is made upon the particular matter to which such laws relate. Punishment by the common law is excluded under the Criminal Code (*h*).

**Courts.**—(1.) *The Royal Court of St. Lucia* (*i*) is a Superior Court of Record (*k*), held before the Chief Justice as sole Judge (*l*). It has original jurisdiction in all civil causes and matters within the Colony (*m*); Admiralty jurisdiction (*n*); the criminal jurisdiction of the English High Court and Courts of Assize (*o*); appellate civil jurisdiction over *District Courts* (*p*), and jurisdiction over appeals from magistrates in the exercise of criminal and quasi-criminal jurisdiction (*q*). An appeal lies from it to the Court of Appeal for

(*d*) Lucas, "Hist. Geog. Brit. Colonies," ii., pp. 205—216.

(*e*) *Gahan v. Lafitte* (1842), 3 Moo. P. C. 383; and see *Du Boulay v. Du Boulay* (1869), L. R. 2 P. C. 430.

(*f*) A revised edition was published by authority in 1889.

(*g*) Art. 2485.

(*h*) Art. 10.

(*i*) No. 98 of Revised Laws, 1889.

(*k*) *Ibid.*, s. 3 (2).

(*l*) *Ibid.*, s. 4.

(*m*) But see "District Courts," *infra*.

(*n*) 53 & 54 Vict. c. 7.

(*o*) No. 98 of Revised Laws, 1889, s. 7.

(*p*) *Ibid.*, s. 8 (1).

(*q*) *Ibid.*, s. 8 (2).

the Windward Islands (*r*), and thence to the Privy Council on the conditions stated above (*s*).

(II.) *District Courts* in each of the judicial districts into which the island is divided (*t*) are held before the magistrate of each district (*u*), with civil jurisdiction in the cases specified in the fourth part of the Code of Civil Procedure (*x*), viz., debts and demands up to £20; possessory actions up to £5, with the exception of actions in which the title to land disputed, actions for libel, slander, &c., hypothecary actions; purely Admiralty actions; and an appeal lies to the Royal Court (*y*); and summary criminal jurisdiction (*z*), with appeal to the Royal Court except from orders—(1) for the adjournment of any cause or matter; (2) in respect of indictable offences; (3) for remand; (4) for bail (*a*). As to practice and procedure generally in all Courts, see Codes of Civil Procedure, 1879 and Criminal Procedure, 1888 (*b*).

**St. Vincent: Political History.**—During the seventeenth century, St. Vincent was less intruded upon by European colonists than perhaps any other island of any size in the West Indies. It was mentioned in the Carlisle grant of 1627, and included in the commission of the Governor of Barbados in 1671. St. Vincent was associated with St. Lucia (*q.v.*) in its various captures by the English and restoration to the French (*c*). A separate legislative assembly was constituted in 1767 (*d*). A rising among the blacks was quelled in 1772, with the aid of troops fetched from North America, and a treaty concluded in the following year, by which the Caribs acknowledged the English supremacy. In 1779, the disaffection of the Caribs, coupled with dissensions between the Governor and the colonists, led to the loss of St. Vincent, but it was restored by the Peace of Versailles in 1783. The island was united with the old Windward Islands Government in 1833 under the headship of Barbados (*e*).

(*r*) No. 98 of Revised Laws, 1889, s. 11. See Court of Appeal Ordinance, 1859, and Pt. V. of Code of Civil Procedure, 1879.

(*s*) *Supra*, p. 251.

(*t*) No. 99 of Revised Laws, 1889, ss. 3, 4.

(*u*) *Ibid.*, s. 5.

(*x*) No. 16 of 1879; see s. 871.

(*y*) See No. 16 of 1879, ss. 909 *et seq.*

(*z*) No. 21 of 1898, s. 6.

(*a*) *Ibid.*, s. 9.

(*b*) No. 16 of 1879, and No. 102 of "Laws," 1889.

(*c*) Lucas, "Hist. Geog. Brit. Colonies," ii., pp. 205—212.

(*d*) Clark, "Colonial Law," p. 215.

(*e*) Lucas, "Hist. Geog. Brit. Colonies," ii., pp. 212—217.

**Law in Force.**—The law in force in St. Vincent consists of—(1) the common law of England; (2) Colonial Ordinances, &c.

**Courts.**—(I.) *The Supreme Court of Judicature* (*f*), is held before the Chief Justice as sole judge (*g*), with the jurisdiction of the English Courts of oyer and terminer and gaol delivery and of the High Court of Justice (other than Admiralty and matrimonial (*h*)); the jurisdictions of the former Supreme Court and Court of Chancery, Grand Sessions of the Peace and Court of Ordinary are transferred to it (*i*); it has criminal jurisdiction over all treasons, felonies, &c., committed within the colony or three miles of any of its shores (*k*); and the jurisdiction of the Lord Chancellor in infancy and lunacy (*l*). An appeal lies to the Court of Appeal for the Windward Islands and thence to the Privy Council (*m*). The Supreme Court exercises summary civil jurisdiction in debt up to £50 (*n*), and an appeal only lies in cases involving a sum of £25 or more exclusive of costs (*o*). Appeals from the Chief Justice sitting as magistrate are to be determined by an officer called the Commissioner, appointed by the Governor of the Windward Islands (*p*).

(II.) *Police Courts.*—The Colony is divided into several Police Districts (*q*), presided over by Police Magistrates with summary jurisdiction (*r*). An appeal lies on points of law to the Supreme Court (*s*).

**LEEWARD ISLANDS: Political History** (*t*). — The Leeward Islands were separated from Barbados and the remainder of the Caribbean Islands in 1671, but were kept together under one Governor. There appears to have existed some kind of legislative assembly (*u*), though it was not definitely constituted until 1689. The commission issued to the Governor in that year provided for a

(*f*) No. 14 of 1880.

(*g*) *Ibid.*, cl. vi.

(*h*) *Ibid.*, cl. ix.

(*i*) *Ibid.*, cl. x.

(*k*) *Ibid.*, cl. xi.

(*l*) *Ibid.*, cl. xiii.

(*m*) See general note, *supra*, p. 251, note (*j*).

(*n*) No. 15 of 1880, cl. v.

(*o*) No. 1 of 1900, s. 4.

(*p*) No. 17 of 1897, s. 3.

(*q*) No. 16 of 1897, s. 4.

(*r*) See No. 16 of 1878; Magistrates

Ordinance of 1886; No. 1 of 1894.

(*s*) See No. 331 of 1871, cl. 5; and No. 17 of 1897, ss. 4, 5.

(*t*) Except where otherwise stated the authority for this account of these islands is Lucas, "Hist. Geog. of Brit Colonies," vol. ii., 133–152.

(*u*) Reference is made in a letter from the Council for Trade and Plantations to "representatives of the Leeward Islands" in Calendar of State Papers. America and West Indies, 1674, No. 1365.



separate Legislature for each island, and a Federal Legislature for the group. The latter was only intended to supplement the work of the former, and appears to have met on very rare occasions, and for the last time in 1798. Early in the nineteenth century efforts were made to revive this Federal Legislature, but it was not until 1871 that the Presidencies of Antigua (with its dependencies Barbuda and Redonda), Montserrat, St. Kitts and Nevis (including Anguilla), Dominica and the Virgin Islands, were constituted one Colony by Imperial Act of Parliament (x).

**Antigua.**—The island was first colonised by the English from St. Kitts in 1682. During the war with France it was taken by the French, but recaptured by Lord Willoughby in 1667; and it was in possession of the English at the Peace of Breda which confirmed their ownership (y). When England was again at war with France, at the end of the eighteenth century, Antigua was the only island which escaped capture.

**St. Christopher.**—The first settlement of the English in the Leeward Islands was made in St. Kitts in 1623. Not long after the French also colonised a portion of the island, and for a time the two nations lived in amity side by side. St. Kitts became the centre of colonisation for the other islands. The island capitulated to the French during the war in 1666, but was recaptured, and the portion which had formerly belonged to the English restored by the Treaty of Breda. In 1689 the French again made themselves masters of the island, but it was retaken in the following year and remained solely a possession of the British until the Peace of Ryswyck, when France recovered her portion of it. But the Treaty of Utrecht provided that "the island of St. Christopher's is to be possessed alone hereafter by British subjects" (z). For seventy years there was peace, and for a short period following France enjoyed possession of the island, which was finally confirmed to England by the Peace of Versailles in 1788 (a).

**Nevis.**—Nevis was settled from St. Kitts in 1628, but in the following year the colonists were nearly annihilated by the Spaniards. During the war with France at the end of the seventeenth century it escaped capture, but in the French war of 1778

(x) 34 & 35 Vict. c. 107.

(z) Art. 12. *Ubi. cit. sup.*, p. 380.

(y) Art. 3. Chalmers, "Treaties,"  
vol. i, p. 134.

(a) Art. 8. *Ubi. cit. sup.*, p. 500.

was taken with the other Leeward Islands. The Peace of Versailles restored them to England. The island was united with St. Christopher in one presidency in 1882 (*b*).

**Anguilla.**—Anguilla was colonised by Englishmen in 1650, but the settlers were ill-treated by the Irishmen in alliance with the French during the subsequent war, and they removed to Antigua in 1689.

**Dominica.**—The island was included in the original Carlisle grant in 1625, and also when it was transferred to Lord Willoughby in 1647. But the earliest settlers had been Frenchmen, and a treaty appears to have been made in 1660 by which the island was left to the undisturbed possession of the natives. Nevertheless, the British seem to have exercised rule there, as a commission was issued to a deputy-governor by the Barbados Government. The island was again declared to be neutral by the Peace of Aix-la-Chapelle in 1748. But the French appear to have followed the precedent set by the British, as during the war a governor was found to be in charge and endeavoured to defend it. It was taken by the British in 1761, and assigned to Great Britain by the Peace of Paris in 1763 (*c*). At first Dominica was included under one government with Grenada, St. Vincent and Tobago, but was separated in 1771. Attempts were made with temporary success by the French to regain possession on three occasions. In 1833 the island was, with Antigua and the other Leeward Islands, formed into one government under a Governor resident at Antigua (*d*).

**Montserrat.**—The island was included in the Carlisle grant in 1625, and in 1692 was colonised from St. Kitts by Irish Roman Catholics. It passed into French possession at the beginning of 1667, but after a few months was retaken by Lord Willoughby. It capitulated to the French in 1782, but was finally restored to England in 1784 (*e*).

**Virgin Islands.**—The colonisation of these islands would seem to have been largely the result of buccaneering enterprise. Settlements were made in the middle of the seventeenth century. Tortola was taken from the Dutch in 1672, and shortly afterwards,

(*b*) See St. Christopher, Ordinance No. 4 of 1882.

(*c*) Art. 9. Chalmers, "Treaties," vol. i., p. 475.

(*d*) "Colonial Office List," 1906, p. 243.

(*e*) *Ibid.*, p. 245.

with its dependencies, it is said, was included in the commission of the Governor of the Leeward Islands. A legislative assembly was granted to the islands in 1774. The island of Sombrero was included in the Presidency by Ordinance No. 1 of 1905.

**Law in Force.**—The law in force consists of (1) the common law of England; (2) Imperial Acts applying to the Colony (*f*); and (3) Acts of the Federal Legislature from 1871, Orders in Executive Council, &c. (*g*).

**Courts.**—The *Supreme Court*, consisting of a Chief Justice and a Puisne Judge (*h*) has its principal seat in the Presidency of Antigua (*i*). The Court possesses the powers of the English Supreme Court, under the Judicature Act, 1873 (*k*). The Court, strengthened by the addition of some other fit and proper person (*l*), also has appellate jurisdiction. *Circuit Courts* are held in the different islands of the Colony (*m*). In criminal matters an appeal lies to the full Court for error of law (*n*). Inferior jurisdiction is exercised by *Magistrates* under the Magistrates' Code of Procedure Act, 1891 (*o*), which unified the law for the trial of petty offences in the different dependencies (*p*). The Colony is divided into districts, each having a Resident Magistrate (*q*), who is also a coroner (*r*).

(*f*) Ordinance No. 2 of 1880, s. 39.  
(*g*) "Journ. Comp. Leg.," N. S., vol. ii., p. 110.

(*h*) No. 10 of 1903, s. 2.

(*i*) *Ibid.*, s. 3.

(*k*) No. 2 of 1880, s. 35.

(*l*) No. 10 of 1903, s. 7. The person selected shall be at the time of appointment a judge or an attorney-general in some Colony other than the Leeward Islands or a Magistrate in that or any

other Colony who has been called to the English Bar.

(*m*) *Ibid.*, s. 8.

(*n*) *Ibid.*, s. 9.

(*o*) No. 10 of 1891.

(*p*) See the Leeward Islands Magistrates Acts, compiled by the draftsman, C. G. Walpole (London, 1892).

(*q*) No. 10 of 1891, s. 11.

(*r*) No. 12 of 1889.

## CHAPTER VII.

### WEST AFRICA AND SOUTH ATLANTIC COLONIES.

**THE GAMBIA : Political History (a).**—The present British dependency of the Gambia dates from 1816, when British traders from the settlements on the Senegal, then finally restored to France, established themselves at the mouth of the river. The Gambia settlement, originally named Bathurst, was vested in the African Company, but in 1821 (b), on the dissolution of that company, it was included with the other British settlements in West Africa, in the Colony of the West Africa Settlements, and placed under the Government of Sierra Leone. In 1823 McCarthy's Island was purchased. In 1826 the Ceded Mile was acquired, in return for a pension, from the King of Barra. Cape St. Mary—now part of British Combo—was annexed in 1827 and 1840. In 1848 the united Government of the West Africa Settlements was abandoned, and the Gambia became a separate Colony. In 1866 the Settlements were again combined under one Governor. On the union in 1874 of the Gold Coast and Lagos into the Gold Coast Colony, Sierra Leone and the Gambia remained in political union, the administrator of the latter being subordinate to the Governor of the former, and they were frequently described as the West Africa Settlements. In 1888 (c) the settlements of Sierra Leone and the Gambia were constituted separate Colonies. By an agreement signed at Paris, August 10th, 1889 (d), between France and England, the boundaries were determined between their possessions. The extent of the Gambia Protectorate is defined by Order in Council of November 28th, 1893 (e).

**Law in Force.**—The law in force in the Colony (f) consists of the

(a) See Lucas, "Hist. Geog." iii., 157—160.

(b) The West Africa Act, 1821 (1 & 2 Geo. IV. c. 28).

(c) Letters Patent of November 28th, 1888: Stat. R. & O. Rev., 1904, vol. vi., "Gambia," p. 1.

(d) Hertslet, "Treaties," vol. xviii., p. 419.

(e) Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 143.

(f) The title "Colony of the Gambia" is derived from the Letters Patent of November 28th, 1888; see note (c).

common law of England, introduced by the British settlers from Senegal in 1816, Imperial Acts extending to it (*g*), and statutes of general application in force in England on November 1st, 1888 (*h*), Orders in Council, and local Ordinances.

**Courts.**—(I.) *The Supreme Court of the Colony of the Gambia* (*i*).—The Supreme Court of Judicature for the Colony (*k*) is held before a Chief Magistrate (*l*), and exercises the powers of the English High Court of Justice (except those of the High Court of Admiralty (*m*), unless exercisable by virtue of any Imperial Act (*n*)), the authority of the Lord Chancellor over lunatics (*o*), and also the English jurisdiction in probate and divorce (*p*). There is a fusion of law and equity as in England (*q*). Criminal trials are held before the Chief Magistrate and a jury of twelve, or, if that number cannot be had, not fewer than six, except in capital cases (*r*) and libel, where also seven jurors must be special (*s*); and in cases of perjury, embezzlement, slave-dealing, and offences against women half the jurors must be special (*t*). For hearing appeals from the Muhammadan Court a Tamsir, or person learned in the Muhammadan law, sits with the Chief Magistrate as assessor for advisory purposes only (*u*). An appeal lies from final judgments of the Supreme Court of the Gambia to the Supreme Court of Sierra Leone and thence to the Privy Council (*x*).

(II.) *A Court of Requests* "for the easy and speedy recovery of small debts" is held at Bathurst before the Chief Magistrate or two Commissioners (*y*), with jurisdiction in personal actions, &c., up to £50 (*z*). An appeal lies to the Supreme Court (*a*).

(III.) *Native Tribunals*.—In every district there is a Native Tribunal (*b*) constituted by three or more native members, appointed

(*g*) See Piggott, "Imperial Statutes," vol. ii., pp. 547—548.

(*h*) No. 4 of 1889, ss. 17, 19.

(*i*) This title was substituted, by No. 4 of 1889, s. 3, for "the Court of Civil and Criminal Justice."

(*k*) *Ibid.*, s. 3.

(*l*) *Ibid.*, s. 4.

(*m*) *Ibid.*, s. 13.

(*n*) No. 8 of 1891, s. 1. See, the Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. c. 27).

(*o*) No. 4 of 1889, s. 15.

(*p*) *Ibid.*, s. 16.

(*q*) *Ibid.*, s. 21.

(*r*) *Ibid.*, s. 38.

(*s*) *Ibid.*, s. 39.

(*t*) *Ibid.*, s. 39.

(*u*) No. 10 of 1905, s. 6.

(*x*) Order in Council of November 24th, 1891: Stat. R. & O. Rev., 1904, vol. vi., "Gambia," p. 5: No. 7 of 1902, s. 17.

(*y*) No. 15 of 1899, s. 1.

(*z*) *Ibid.*, s. 3.

(*a*) No. 7 of 1902, s. 17.

(*b*) *Ibid.*, s. 21.

by the Governor or by the Commissioner, sitting alone or along with one or more native members (c). In the absence of the Commissioner, the Head Chief may convene and preside at native tribunals (d). The Court has criminal jurisdiction in all offences not requiring a greater punishment than a fine of £20, or imprisonment for six months with hard labour (e). Other offences incapable of being adequately punished by the maximum punishment are committed for trial by the Supreme Court (f). In civil matters the native tribunals have the same jurisdiction as the Court of Requests at Bathurst (g). An appeal lies to the Supreme Court (h).

(IV.) *Muhammadian Court*.—By Ordinance No. 10 of 1905, a Muhammadian Court is constituted at Bathurst (i) of a Cadi appointed by the Governor (k). There is a similar Court in Cyprus (q.v.). The Court has jurisdiction in all matters, contentious or non-contentious, between or exclusively affecting Muhammadian natives, relating to civil status, marriage, succession, donations, testaments, and guardianship (l). The procedure and practice is according to the rules of the Muhammadian law (m). An appeal lies to the Supreme Court (n).

**GOLD COAST COLONY: Political History.**—The Gold Coast Colony includes the Gold Coast, Ashanti, and the Protected Northern Territories. The Gold Coast formed part of the territories of "the Corporation of the Company of Merchants trading to Africa," which was dissolved by the West Africa Act, 1821 (o), its possessions being vested in the Crown, and placed under the government of the West Africa Settlements, the seat of Government being then Sierra Leone (p). Ashanti was annexed to the dominions of the Crown, after the final defeat of the Ashantis in 1901, by an Order in Council of September 26th in that year (q). This Order in Council,

(c) No. 7 of 1902, s. 22.

(d) *Ibid.*, s. 24.

(e) *Ibid.*, s. 32.

(f) *Ibid.*, s. 28.

(g) *Ibid.*, s. 21.

(h) *Ibid.*, s. 17.

(i) No. 10 of 1905, s. 2.

(k) *Ibid.*, s. 3.

(l) *Ibid.*, s. 4.

(m) *Ibid.*, s. 5.

(n) *Ibid.*, s. 6.

(o) 1 & 2 Geo. IV. c. 28. As to the

earlier history of the Gold Coast, see Lucas, "Hist. Geog." iii., p. 197; Colonial Office List, s.v. "Gold Coast."

(p) The limits of the Colony were defined by Order in Council, October 22nd, 1906, *London Gazette*, p. 7199; see "Gambia," *supra*, p. 261; and "Sierra Leone," *infra*, p. 272.

(q) The Ashanti Order in Council, 1901: Stat. R. & O. Rev., 1904, vol. i., "Ashanti," p. 1, amended by Order in

to which effect was given by the Ashanti Administration Ordinance, 1902 (*r*), provided for the administration of Ashanti under the Government of the Gold Coast. The Northern Territories, *i.e.*, the territories north of Ashanti, were constituted a separate district in 1897; and, after protracted international negotiations and delimitation proceedings with France and Germany (*s*), provision was made for the administration of the Territories, as settled thereby, under the Government of the Gold Coast, by an Order in Council of September 26th, 1901 (*t*), and an Administration Ordinance, 1902 (*u*).

**Law in Force.**—The law in force on the Gold Coast consists of—(i.) the common law of England, as existing on July 24th, 1874 (*x*); (ii.) native customs not repugnant to natural justice in suits between natives (*y*); (iii.) the Order in Council regulating appeals to the Privy Council (*z*); (iv.) local Ordinances (*a*).

**Courts.**—(I.) *The Supreme Court of the Gold Coast Colony* consists of a Chief Justice and four Puisne Judges (*b*). It is a Superior Court of Record, and possesses all the powers (except those of the High Court of Admiralty (*c*)) of the High Court of Justice in England (*d*), and civil and criminal jurisdiction in the adjacent territories (*e*); also the lunacy jurisdiction of the Lord Chancellor (*f*). The Supreme Court is also a Court of Appeal from the Congo "local jurisdiction" under the Africa Order in Council, 1889 (*g*). Divisional

Council, October 22nd, 1906, *London Gazette*, p. 7198.

(*r*) No. 1 of 1902; and see the following amending Ordinances: Nos. 2 and 3 of 1902, 2 and 4 of 1903, 1 of 1904, 3 of 1905.

(*s*) See the Anglo-French Convention of June 14th, 1898 (*Herts.* *xxi.*, p. 374); and the Anglo-German Convention of November 14th, 1899 (*ibid.*, p. 1178).

(*t*) The Northern Territories Order in Council, 1901: *Stat. R. & O. Rev.*, 1904, vol. v., "Foreign Jurisdiction," p. 146, amended by Order in Council, October 22nd, 1906, *London Gazette*, p. 7198.

(*u*) No. 1 of 1902, and amending Ordinances.

(*x*) No. 4 of 1876, s. 14, but see No. 1 of 1893. The Criminal Code of

1892 (No. 12 of 1892) excludes (see ss. 7, 12, 13) the common law.

(*y*) No. 4 of 1876, s. 19; and No. 5 of 1883.

(*z*) See *infra*, note (*o*).

(*a*) See note by Sir W. Brandforth Griffith, Chief Justice of the Gold Coast Colony, in "*Jour. Comp. Leg.*," *i.*, p. 146. As to native law and custom, see Sarbah's "Fanti Customary Laws"; Hayford, "Gold Coast Native Institutions."

(*b*) No. 4 of 1876, ss. 3, 4.

(*c*) As to Admiralty jurisdiction, see the Colonial Court of Admiralty Act, 1890 (53 & 54 Vict. c. 27).

(*d*) No. 4 of 1876, s. 11.

(*e*) *Ibid.*, s. 12.

(*f*) *Ibid.*, s. 13.

(*g*) See p. 332.

Courts, consisting of one or two Judges, and invested with the original jurisdiction of the Supreme Court (*h*), sit in the provinces (*i*), and hold Assizes at such times as the Governor appoints (*k*). A Divisional Court may transfer a cause from one province to another (*l*). An appeal lies from the Divisional Court to the Full Court (*m*) from final judgments where the claim determined amounts to or exceeds £50 (*n*). An appeal lies to the Privy Council from final judgments for sums above £500 (*o*). In criminal cases, appeals lie—(i.) from the District Commissioner to the Divisional Court (*p*); and (ii.) from the Divisional Court to the Full Court (*p*), where, in either (i.) or (ii.), the person convicted applies for a special case within four days and the application is not plainly frivolous, or the Court convicting states a case or the Appeal Court orders one to be stated (*q*). As to appeals to the Supreme Court from “Ashanti” and the “Northern Territories,” see those headings, *infra*.

(II.) *District Commissioners' Courts* are held before District Commissioners, who are executive as well as judicial officers (*r*) with civil jurisdiction—(i.) in personal suits, whether based on contract or tort, up to £25; (ii.) in suits between landlord and tenant up to £25; (iii.) in *habeas corpus*; (iv.) as to guardianship and custody of infants; (v.) to grant injunctions (*s*); also over questions as to title to land, if the parties consent (*t*); and with criminal jurisdiction over summary offences (*u*) up to the limit ordinarily of a fine of £50, or six months' imprisonment (*x*). District Commissioners are required to make monthly returns of criminal cases to the Chief Justice (*y*), and every such return operates as an appeal on behalf of every person convicted (*z*), and the Chief Justice may either decide such cases himself or direct the Commissioner to

(*h*) No. 4 of 1876, s. 23.

(*i*) *Ibid.*, s. 23. As to the provinces, see s. 21.

(*k*) *Ibid.*, s. 24.

(*l*) *Ibid.*, s. 32 (a).

(*m*) *I.e.*, two or more Judges, of whom the Chief Justice must be one: No. 4 of 1876, art. 7.

(*n*) No. 4 of 1876, s. 36.

(*o*) Order in Council of October 23rd, 1877: Stat. R. & O. Rev., 1904, vol. vi., “Judicial Committee,” p. 27.

(*p*) No. 5 of 1876, art. 158.

(*q*) *Ibid.*, arts. 156, 157.

(*r*) No. 14 of 1894.

(*s*) *Ibid.*, s. 14.

(*t*) *Ibid.*, s. 15. In the absence of such consent, the Chief Justice may transfer the case to a Divisional Court, *ib.*

(*u*) *Ibid.*, art. 16.

(*x*) *Ibid.*, art. 19.

(*y*) *Ibid.*, art. 26.

(*z*) *Ibid.*, art. 27.



state a special case for the Divisional Court (a). Civil appeals lie to the Divisional Court (b). District Commissioners hold inquiries into fires and other occurrences resulting in serious injuries (c). Provision was made by Ordinance No. 3 of 1898 for the appointment of travelling Commissioners who are *ex-officio* District Commissioners of the colony.

(III.) There are *Native Tribunals* (d), with limited civil and criminal jurisdiction similar to that exercised by the Native Courts in the Gambia (e).

**Ashanti.**—The Ashanti Administration Ordinance, 1902 (f), provided for establishing in Ashanti:—

(I.) *A Chief Commissioner's Court*—a Court of Record, with jurisdiction throughout Ashanti. The Chief Commissioner has the powers of a Divisional Court (g) except divorce and matrimonial jurisdiction (h), and is to be guided as regards both civil and criminal jurisdiction by Gold Coast law (i). The Chief Commissioner may refer any matter or cause, civil or criminal, to the Supreme Court (k).

(II.) *A District Commissioner's Court* in each district (l).

By leave of the Commissioner in writing, an appeal lies to the Supreme Court from the Courts of the Chief Commissioner and District Commissioner where the sum or matter involved amounts to £100 (m). No appeal lies from the decision of either Court in any criminal case (n).

(III.) *Native Tribunals*, with civil jurisdiction up to £100 and criminal jurisdiction, except in cases of murder, attempted murder, rape, robbery with violence, slave-dealing, or inflicting a dangerous wound (o). An appeal lies to the Chief Commissioner's or District Commissioner's Court (p) subject to rules (q). The Chief

(a) No. 14 of 1894, art. 28.

(b) *Ibid.*, art. 7.

(c) No. 7 of 1899.

(d) No. 5 of 1883.

(e) *Supra*, p. 262.

(f) No. 1 of 1902.

(g) See "Gold Coast," *supra* (I.).

(h) No. 1 of 1902, s. 5.

(i) *Ibid.*, s. 7.

(k) *Ibid.*, s. 14; and see note (p), *infra*.

(l) *Ibid.*, s. 10.

(m) *Ibid.*, s. 15. The Chief Justice has power to make rules as to references under s. 14, and appeals under s. 15 (s. 5). Rules under this article were made and approved on May 3rd, 1902 (Gold Coast Ordinances, 1903, pp. 1266—69).

(n) *Ibid.*, s. 16.

(o) *Ibid.*, s. 17.

(p) *Ibid.*, s. 19.

(q) *Ibid.*, s. 27.

Commissioner may remove any case from a Native Tribunal to his own Court or that of the District Commissioner (*r*), and the jurisdiction of the Native Tribunals may be curtailed by the Governor (*s*).

**Northern Territories.**—The administration of the Northern Territories is organised on identical lines (*t*).

**NORTHERN NIGERIA: Political History** (*u*).—The Niger Territories (*i.e.*, Northern Nigeria, and a wide strip of country lying along the Niger from Idda to the coast, and now included in Southern Nigeria) were secured to Great Britain by nearly 500 treaties, made by the Royal Niger Company (formerly the National African Company, Limited), and recognised by the three Anglo-German Agreements of June, 1885, June, 1886, and November, 1893, and the Anglo-French Agreements of August, 1890, and June, 1898 (*x*). The Protectorate was transferred from the Royal Niger Company to the Crown as from January 1st, 1900, under the provisions of an Order in Council of December 27th, 1899 (*y*). A Protectorate (the Oil Rivers Protectorate) was proclaimed over the Niger districts along the West African coast from a point on the shore of the Bight of Benin about ten miles north-west of the Benin river to the Rio del Rey on the Gulf of Guinea, on June 5th, 1885 (*z*). The Oil Rivers Protectorate was extended in 1887 (*a*), and its name changed to the Niger Coast Protectorate in 1893 (*b*). An Order in Council dated December 27th, 1899 (*c*), constituted the Protectorate of Southern Nigeria—the territory formerly included in that of the Royal Niger Company between Idda and the coast being added to it on the transfer in 1900 of the territories of that Company to the Crown. It was amended by another Order in Council in

(*r*) No. 1 of 1902, s. 20.

(*s*) *Ibid.*, s. 21.

(*t*) No. 1 of 1902, and all the amending Ordinances: Nos. 2 and 3 of 1902, 3 of 1904, and 3 of 1905.

(*u*) As to the history of the Niger Territories generally, see Lucas, "Hist. Geog." iii., *passim*, and pp. 229 *et seq.*; and Colonial Office List, "Northern Nigeria," "Southern Nigeria."

(*x*) Colonial Office List, "Northern Nigeria."

(*y*) The Northern Nigeria Order in Council, 1899: Stat. R. & O. Rev.,

1904, vol. v., "Foreign Jurisdiction," p. 153. Amended by Order in Council, Feb. 11th, 1907, *London Gazette*, Feb. 12th, 1907.

(*z*) *London Gazette*, June 5th, 1885; "Hertslet," xvii., p. 108.

(*a*) Notification, October 18th, 1887; "Herts." xvii., p. 126.

(*b*) Notification of May 13th, 1893; "Herts." xix., p. 79.

(*c*) The Southern Nigeria Order in Council, 1899: Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 167.

1904 (*d*), and these have been replaced by the Southern Nigeria Protectorate Order in Council, 1906 (*e*), which defines the area of the Protectorate and its relationship to the Colony.

**Law in Force.**—In both Northern (*f*) and Southern (*g*) Nigeria the common law, the doctrines of equity, and the statutes of general application in force in England on January 1st, 1900, apply. Native custom is to be regarded in proceedings between natives (*h*).

**Courts.**—In Northern Nigeria there are :

(I.) A *Supreme Court* (*i*)—a Superior Court of Record (*k*), with original jurisdiction over all cases directed to be transferred to it from inferior Courts (*l*), and appellate jurisdiction over the Provincial Courts (*m*) up to a £50 limit, provision being made in cases of appeal by a non-native for a native respondent being represented by one of the law officers of the Protectorate, or some other fit and proper person (*n*).

(II.) A *Provincial Court*, also a Superior Court of Record (*o*), in each province, presided over by the Resident (*o*), with limited civil and criminal jurisdiction within its district (*p*). Sentences of death, or of more than six months' imprisonment, or of corporal punishment exceeding twelve strokes, or fines exceeding £50, require confirmation by the High Commissioner (*q*). Monthly lists of convictions are to be sent to the High Commissioner (*r*) and these operate as appeals (*s*).

(III.) A *Cantonment Court* in each cantonment (*t*), with civil jurisdiction up to £5 and criminal jurisdiction up to thirty days' imprisonment, a fine of £5, and corporal punishment not exceeding five strokes (*u*).

(IV.) *Native Courts* at such of the principal or other native towns as the Resident, with the assent of the High Commissioner, appoints (*x*). The Native Court consists of one or more persons appointed by the Head Chief or Emir, with the approval of the

(*d*) Stat. B. & O. 1904, p. 187.

(*e*) *London Gazette*, February 20th, 1906.

(*f*) Proc. No. 6 of 1902, s. 13.

(*g*) No. 6 of 1900, s. 11.

(*h*) No. 6 of 1902, s. 18, and see No. 9 of 1902, s. 9; No. 6 of 1900, art. 13.

(*i*) No. 6 of 1902, s. 3.

(*k*) *Ibid.*, s. 11.

(*l*) *Ibid.*, s. 27 (2).

(*m*) See (II.), *infra*.

(*n*) Provincial Court Rules No. 29.

(*o*) No. 9 of 1902, s. 7.

(*p*) *Ibid.*, s. 10.

(*q*) *Ibid.*, s. 15.

(*r*) *Ibid.*, s. 18.

(*s*) *Ibid.*, s. 19.

(*t*) No. 7 of 1902, s. 2.

(*u*) *Ibid.*, s. 12.

(*x*) Proc. No. 5 of 1900, s. 2.

Resident (*y*). These Courts have no jurisdiction where the Crown is a party, or over non-natives, or (except with the consent of the Resident) natives in Government employ, or within the cantonment (*z*). They apply native law subject to the usual conditions (*a*). No counsel or attorney is allowed to appear for any party before them without the leave, in writing, of the Resident (*b*).

In Southern Nigeria, there are the following Courts—

(I.) The *Supreme Court in Southern Nigeria* (*c*)—a Superior Court of Record, with all the jurisdiction of the English High Court (*d*). The Supreme Court, presided over by the Chief Justice, holds Assizes at the principal centres (*e*).

(II.) *Commissioners' Courts* (*f*) of the usual West African type, with limited civil (*g*) and criminal (*h*) jurisdiction. Provision is made for monthly returns of convictions (*i*), operating as an appeal (*k*). The Chief Justice may order a Commissioner to state a case for the Supreme Court (*l*). Appeals lie to the Supreme Court (*m*).

(III.) The *Police Magistrate of Southern Nigeria* has similar jurisdiction at Calabar (*n*).

(IV.) *Native Courts* are established, consisting of—(a) Native Councils (*o*), with original civil jurisdiction up to £200 (*p*) and criminal jurisdiction up to two years' imprisonment, corporal punishment not exceeding fifteen strokes, and £100 fine (*q*); and superintending (*r*) and appellate (*s*) jurisdiction over (b) minor Courts (*t*), with civil jurisdiction up to £25 (*u*), and criminal jurisdiction up to six months' imprisonment, flogging not exceeding fifteen strokes, and £50 fine (*x*).

(*y*) No. 5 of 1900, s. 3.

(*z*) *Ibid.*, s. 6.

(*a*) *Ibid.*, s. 8.

(*b*) *Ibid.*, s. 14.

(*c*) Proc. No. 6 of 1900, s. 3.

(*d*) *Ibid.*, ss. 9—12.

(*e*) *Ibid.*, s. 15.

(*f*) No. 8 of 1900.

(*g*) *Ibid.*, s. 16. Debt up to £100; recovery of land up to £25 rent or value; *habeas corpus*; guardianship of infants; injunctions, *ib.*

(*h*) *Ibid.*, s. 18, viz., (1) six months' imprisonment with or without hard labour, and corporal punishment not exceeding 15 strokes; (2) imprison-

ment not exceeding three months, if a fine, which must not exceed £25, is added; (3) £50 fine.

(*i*) *Ibid.*, s. 23.

(*k*) *Ibid.*, s. 24.

(*l*) *Ibid.*, s. 25.

(*m*) *Ibid.*, s. 9.

(*n*) Proc. No. 24 of 1903.

(*o*) No. 25 of 1901, s. 4.

(*p*) *Ibid.*, s. 13.

(*q*) *Ibid.*, s. 14.

(*r*) *Ibid.*, s. 6.

(*s*) *Ibid.*, s. 30 (1).

(*t*) *Ibid.*, s. 4.

(*u*) *Ibid.*, s. 15.

(*x*) *Ibid.*, s. 16.

An appeal lies from the Native Council to the Supreme Court (*y*). The Native Courts have also important ministerial (*z*) and rule-making (*a*) powers.

The relations of the Supreme Courts of Northern and Southern Nigeria to the Supreme Court of Lagos are described below (*b*).

**LAGOS** (*c*): **Political History** (*d*).—The island of Lagos was annexed by cession in August, 1861 (*e*), with a view to the suppression of the slave trade, and the limits of the Colony have been enlarged by subsequent cessions in 1863 (Palma and Leckie, and Badagry), 1885 (Mahin) and 1892—94 (Jebu). The name of the Colony was changed to Southern Nigeria in 1906. (*f*)

**Law in Force.**—The law in force in Lagos consists of—(1) the common law of England, introduced into the Colony in 1876, and continued after the separation of Lagos from the Gold Coast, by Letters Patent of January 18th, 1886 (*g*); (2) native laws and customs not repugnant to natural justice, as between natives; (3) statutes of general application in England on January 1st, 1900 (*gg*); (4) local ordinances.

**Courts.**—The *Supreme Court* consists of—(1) the Chief Justice and Puisne Judges (if any) of the Colony. At present there is no Puisne Judge permanently resident in the Colony.

(*y*) No. 25 of 1901, s. 30 (2); amended by No. 17 of 1903, s. 7.

(*z*) *Ibid.*, s. 35.

(*a*) *Ibid.*, s. 36. See, further, the amending Proclamations, Nos. 17 and 23, 1903.

(*b*) See p. 271.

(*c*) The amalgamation of the Colonies of Lagos and Southern Nigeria presented difficulties involving delay, which has made it impossible to record the changes in the judicial system that appear to be involved in the union of the Courts under one Government.

(*d*) Lucas, "Hist. Geog." iii., pp. 217 *et seq.*

(*e*) When it was first annexed, Lagos, with the other West Africa Settlements, was placed under the Governor-in-Chief at Sierra Leone; in 1874 it was incorporated with the

Gold Coast; in 1886 it became a separate Crown colony: See Stat. R. & O. Rev., 1904, vol. vi., "Lagos," p. 1. It was held in *Callender, Sykes & Co. v. Colonial Secretary of Lagos* [1891] A. C. 460, that the Supreme Court of the Gold Coast which, prior to this Ordinance, was the Supreme Court of the colony, had no bankruptcy jurisdiction in Lagos, and could not, therefore, act as an auxiliary to an English Court under s. 74 of the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71). As to the application of the laws to the adjacent territories, see Ordinances No. 1 of 1902, and Nos. 14, 17, and 20 of 1904.

(*f*) *London Gazette*, February 20th, 1906, Southern Nigeria Protectorate Order in Council.

(*g*) "Jour. Comp. Leg." i., p. 371.

(*gg*) Ordinance No. 17 of 1906.

But in consequence of the difficulties that have been experienced from the Supreme Courts of West Africa being short-handed owing to the illness or absence of Judges, a system has been inaugurated of making the Supreme Court Judges of the several Colonies interchangeable. The Supreme Court of Lagos therefore consists of—(2) the Chief Justice and Puisne Judges of the Gold Coast; and (3) the Chief Justice and any Puisne Judges of Northern and Southern Nigeria. The Chief Justices and Puisne Judges of Northern and Southern Nigeria are Puisne Judges of the Supreme Court of Lagos (*h*), and the Chief Justice of Lagos is President of the Court (*i*). After him the order of precedence is as follows: The Chief Justices of the other Colonies according to priority of appointment; then the Puisne Judges in order of appointment, acting Judges taking rank after those holding permanent appointments. The Supreme Court of Lagos is a Superior Court of Record, with the jurisdiction of the High Court of Justice in England (*j*), all civil and criminal jurisdiction in the adjacent territories (*k*), and the jurisdiction of the Lord Chancellor over infants and lunatics (*l*). The Colony is divided into provinces and districts, within which the jurisdiction vested in the Supreme Court is exercised. Divisional Courts of one or two Judges may be constituted, exercising original jurisdiction, and hearing appeals from District Commissioners (*m*). An appeal lies from the final judgment of a Divisional Court or a Judge for an amount exceeding £50 (*n*), to a Full Court of two or three Judges, of whom the Chief Justice of Lagos must be one (*o*), sitting in Lagos, or at such other place as the Chief Justice may appoint (*p*), and thence to the Privy Council, where the sum in dispute amounts to £500 (*q*). The Full

(*h*) No. 24 of 1902, amending No. 4 of 1876, s. 4; and see s. 5, as amended by No. 24 of 1902.

(*i*) No. 4 of 1876, s. 5.

(*j*) *Ibid.* s. 11.

(*k*) *Ibid.*, s. 12. See Order in Council of December 29th, 1887; and the Lagos Protectorate Order in Council, July 24th, 1901; Stat. R. & O. Rev., 1904, vol. v., tit. "Foreign Jurisdiction," pp. 150, 151.

(*l*) No. 4 of 1876, s. 13.

(*m*) Sched. 2, Ord. 52, r. 3. As to probate, see No. 10 of 1893, and Orders thereunder. As to Admiralty jurisdiction, see Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. c. 27).

(*n*) No. 4 of 1876, s. 34.

(*o*) *Ibid.*, s. 7.

(*p*) *Ibid.*, s. 32.

(*q*) Order in Council of July 5th, 1889 (Stat. R. & O. Rev., 1904, vol. vi., "Judicial Committee," p. 47).

Court is to sit not less than four times a year, provided that appeals are pending (*r*).

*District Courts* are held before District Commissioners, with civil jurisdiction up to £25 (*s*); and criminal jurisdiction over—(1) offences punishable by penalty, &c., on a summary conviction; (2) offences not being larceny, felony, embezzlement, or receiving, punishable by imprisonment for not more than three months; or not more than forty-two days, and fine not exceeding £25 enforced by distress; or by a fine not exceeding £25, enforced by distress or by imprisonment for not more than three months (*t*). As in the Gold Coast Colony, the District Commissioner furnishes periodical reports of convictions to the Chief Justice, and these reports operate as an appeal (*u*). There is a travelling Commissioner in the Interior Department.

There is a Police Magistrate at Lagos, with jurisdiction defined by the Supreme Court Ordinance, 1876 (*x*), and also with the jurisdiction, both civil and criminal, of a District Commissioner (*y*). The Police Magistrate is subject to the control of the Supreme Court (*z*).

**SIERRA LEONE : Political History.**—The history of Sierra Leone as a British Colony dates only from the year 1787, when a number of negroes, who had been released by Lord Mansfield's well-known judgment in *The Negro Case* (*a*), were sent out from this country as settlers. A grant of land was made by the native Chief, King Naimbara, who, in a treaty confirming it, swore allegiance to the King of England (*b*). The conditions of the settlement were not favourable to success, and the promoters formed themselves into the Sierra Leone Company in order to trade with the peninsula. It was incorporated by Act of Parliament in 1791 (*c*). Slaves from North America who had obtained their freedom by taking the British side in the war then were added to the original number. Under Lord Macaulay's father the settlement at Freetown prospered, but its varied elements made the task of government far from easy. In 1800 the Company obtained a Charter of Justice, which authorised

(*r*) No. 4 of 1876, s. 32. As to Criminal Procedure, see No. 5 of 1876.

(*s*) No. 4 of 1876, s. 45.

(*t*) *Ibid.*, s. 46.

(*u*) *Ibid.*, ss. 53, 54.

(*x*) *Ibid.*, s. 63.

(*y*) *Ibid.*, s. 64.

(*z*) *Ibid.*, s. 62.

(*a*) 20 St. Tri., p. 1.

(*b*) Hertslet's "Treaties," xiv., p. 927.

(*c*) 31 Geo. III. c. 55.

the appointment of a Governor with a Legislative Council and the setting up of a Mayor's Court for the administration of justice. But seven years later an Act of Parliament was passed to dissolve the Company and authorise the resumption by the Crown of the management of the territory. Further importations were brought from Jamaica and other places, so that there has been a medley of races in Sierra Leone to an extent unknown in any other British dependency in West Africa. On the dissolution of the African Company in 1821 the British forts and dependencies were combined into a single Colony under the name of the West Africa Settlements, with the seat of government at Sierra Leone. Additions have been made frequently from time to time to the territory included in the Colony. In 1882 a Convention was concluded with France, though not formally ratified, defining the boundaries which have been further set forth in agreements in 1889 and 1891.

The government of the Colony was regulated by Letters Patent in 1885, and settled in its present form in 1888, when the Gambia was placed under a separate Governor.

**Law in Force.**—Sierra Leone, having been acquired by occupancy, and not by conquest or cession, is a "plantation," and therefore the common law of England prevails in it. The statute law consists of ordinances and certain Imperial Acts, and all Acts of general application in force in England on January 1st, 1880 (*d*).

**Courts.**—The *Supreme Court*, consisting of a Chief Justice and one or more Puisne Judges (*e*), is a superior Court of Record, with the jurisdiction of the English High Court, excepting that possessed by the Court of Admiralty (*f*), of the Lord Chancellor as to infants and lunatics (*g*), and jurisdiction as to probate and divorce (*h*). Criminal trials are held before the Chief Justice and a jury of twelve (*i*), civil actions are tried by the Chief Justice without a jury (*k*). Any person charged with an offence not punishable with death may elect to be tried by assessors instead of by jury (*l*). In

(*d*) No. 14 of 1904; and see "Jour. Comp. Leg.," i., p. 181. The Crown Suits Act, 1855, deals only with proceedings in the United Kingdom, and has not been imported into the Colony by the Ordinance of November 10th, 1881: *Johnson v. Regem*, (1904) 73 L. J. P. C. 113.

(*e*) No. 4 of 1905, s. 3.

(*f*) No. 14 of 1904, s. 4.

(*g*) *Ibid.*, s. 6.

(*h*) *Ibid.*, s. 7.

(*i*) *Ibid.*, s. 17 (*a*).

(*k*) See *Rainy v. Bravo* (1872), L. R. 4 P. C. 287, as to power of adjournment.

(*l*) *Ibid.*, s. 17 (*b*).



capital cases there must be an unanimous verdict; in other cases a majority of two-thirds is sufficient.

Summary jurisdiction was conferred on the Supreme Court by Ordinance No. 4 of 1876, jurisdiction in personal actions up to £100 (*m*), in equitable claims up to £200 (*n*), and in suits for the recovery of land of which the rental does not exceed £15 (*o*). Under the Order in Council of March 1st, 1867, an appeal lies to the Privy Council from final judgments of the Supreme Court for sums above £300 (*p*). The Gambia was severed from Sierra Leone and erected into a separate colony by Letters Patent dated November 28th, 1888 (*q*). Appeals lie from the Supreme Court of the Gambia to the Supreme Court of Sierra Leone, and thence to the Privy Council (*r*).

There is a *Court of Requests* in Freetown and in each of the districts for the recovery of small debts (*s*); in Freetown and the districts attached thereto, constituted of the Police Magistrate or a Commissioner appointed by the Governor (*t*); in other districts, of Commissioners appointed by the Governor (*u*). The District Commissioner is an *ex-officio* Commissioner (*x*). These Courts have jurisdiction—(1) up to £5 in Freetown and the districts attached (*y*); (2) up to £50 in Sherbro (*z*); (3) up to £30 in other districts (*a*). Questions of title to land, assault and battery, libel, slander, &c. (except in the district of Freetown), are not to be tried by the Court of Requests, but by a Judge of the Supreme Court (*b*). An appeal lies to the Supreme Court (in the exercise of its summary jurisdiction) from the Court of Requests (*c*). Ordinance No. 14 of 1901 introduced a system of revision of sentences passed by District Commissioners, similar to that which exists in India and at the Cape. Every District Commissioner is to send to the Chief Justice “at the expiration of every month” a complete list of all criminal cases decided during the month, setting out the name of the

- (*m*) No. 14 of 1904, s. 70.
- (*n*) *Ibid.*, s. 73.
- (*o*) *Ibid.*, s. 70.
- (*p*) Stat. R. & O. Rev., 1904, vol. vi., “Judicial Committee,” p. 81. Under the Charter of 1808 the appealable amount was £400.
- (*q*) Stat. R. & O. Rev., 1904, vol. vi., “Gambia,” p. 1.
- (*r*) Order in Council of November 24th, 1891; Stat. R. & O. Rev., 1904,

- vol. vi., “Gambia,” p. 5.
- (*s*) No. 6 of 1865, s. 2.
- (*t*) No. 8 of 1894, s. 5.
- (*u*) No. 6 of 1865, s. 5.
- (*x*) No. 4 of 1893, s. 2.
- (*y*) No. 6 of 1865, s. 6; No. 5 of 1876, s. 2 (2).
- (*z*) No. 6 of 1867, s. 1.
- (*a*) No. 6 of 1865, s. 6.
- (*b*) *Ibid.*, s. 7.
- (*c*) *Ibid.*, s. 32.

defendant, the offence charged, the date of the conviction (if any), the Ordinance under which the conviction was made, the punishment awarded, and the prisoner's place of detention. This list is to "operate as an appeal" on behalf of every convicted person named in the list, and the Chief Justice may, "without hearing any argument," reverse or amend any judgment given contrary to law.

There are also District Commissioners with the municipal jurisdiction of the Police Magistrates (*d*).

A Court of Native Chiefs similar to those constituted under the Protectorate Courts Ordinance (see *infra*) has been established for the whole of the Sherbro' district except the Port of Sherbro' and the site of the old town of Bendu (*e*).

Ordinance No. 8 of 1902 gives authority to the Supreme Court to try the validity of concessions of lands granted to natives.

The law of Sierra Leone was applied to the Hinterland by Order in Council of August 24th, 1895 (*f*).

The *Protectorate Courts* are as follows:—

(A) *A Court of Native Chiefs* is held (*g*) in each district (these districts are marked out by the Governor in Council) (*h*) before native chiefs, who decide, according to native law and custom, all civil cases exclusively between natives, other than cases (*i*) involving title to land between two or more paramount chiefs or a debt claimed by the holder of a store licence; and all criminal cases other than murder, rape, witchcraft, slave-raiding or dealing, cannibalism, the operations of the Human Leopard and Alligator Societies (*k*), and tribal or faction fights (*l*).

(B) *The Court of the District Commissioner* has jurisdiction in the excepted cases mentioned under (A), other than murder, witchcraft, slave-raiding or dealing, and faction or tribal fights. In civil cases jurisdiction is limited to debts not exceeding £50 (*m*), and in criminal cases to offences not requiring more than three months' imprisonment as adequate punishment (*n*). Where a person not a native is accused of murder, the District Commissioner is to hold a

(*d*) No. 29 of 1905.

(*e*) No. 3 of 1905.

(*f*) Stat. R. & O. Rev., 1904, vol. v.,  
"Foreign Jurisdiction," p. 165.

(*g*) No. 33 of 1901, s. 7.

(*h*) *Ibid.*, s. 6.

(*i*) No. 6 of 1903, s. 8 (1).

(*k*) See No. 29 of 1901, revived by  
No. 25 of 1903.

(*l*) No. 6 of 1903, s. 8 (2).

(*m*) *Ibid.*, s. 12.

(*n*) *Ibid.*, s. 21.

preliminary inquiry, and to commit for trial before the Supreme Court (*o*). Monthly returns are to be forwarded to the Attorney-General (*p*). An appeal lies to the Circuit Court in civil cases exceeding £10 (*q*) and in any criminal matter (*r*). This Court is a Court of Record (*s*).

(C) *The Circuit Court*, consisting of a Judge of the Supreme Court (*t*) is a Court of Record, with the full powers of the Supreme Court in all civil cases (not exclusively between natives) up to £50 (*u*), and in all criminal non-capital cases where the accused is not a native, in charges against a native for murdering a person not a native, and in the excepted cases mentioned under (B), whether the accused is a native or not. In civil cases involving native law or custom the Judge may, and in criminal cases shall, be assisted by three native chiefs (*x*). All the proceedings in capital cases are to be sent to the Governor, without whose warrant the sentence of death cannot be carried into effect (*y*).

**FAULKLAND ISLANDS: Political History.**—The attention of England was first directed to the Falkland Islands by the need of a place of call for British ships in the South Atlantic. The first endeavour, about 1750, to make a settlement was met with a protest from Spain. In 1765 possession was taken of the Eastern Island in the name of the King of England. The Spaniards five years later compelled the English to evacuate the settlement. Protest was made against this proceeding, and after some controversy between the two countries, and also at home, the English abandoned their station, making at the same time a formal declaration of the ownership of the islands. In 1832 the possibility of the United States assuming possession of the islands led the British Government to reassert their dormant claims, this time effectually. For a time the islands remained in charge of the Admiralty (*z*). In 1843 an Imperial Act (*a*) was passed providing for their government, and placing it in the hands of those resident officers. A Governor was appointed in 1876, and the customary constitution

(*o*) No. 6 of 1903, s. 23.

(*p*) *Ibid.*, s. 67.

(*q*) *Ibid.*, s. 47.

(*r*) *Ibid.*, s. 48.

(*s*) *Ibid.*, s. 11.

(*t*) *Ibid.*, s. 37. See amending Ordinance No. 33 of 1905, s. 2 (*a*).

(*u*) *Ibid.*, s. 38.

(*x*) *Ibid.*, ss. 40—42, amended by No. 33 of 1905, ss. 2, 3.

(*y*) *Ibid.*, s. 43.

(*z*) Lucas, "Hist. Geog. Brit. Colonies," ii., pp. 319—323.

(*a*) 6 & 7 Vict. c. 13.

of a Crown Colony established by further Letters Patent in 1892 (*b*).

**Law in Force.**—The islands having been acquired by occupation, the law prevailing in them is the common law of England, modified by such statutes and local Ordinances as apply to the Colony (*c*). The law in force in England on January 1st, 1850, was applied to the Colony (*d*).

**Courts.**—The *Supreme Court* of the Falkland Islands, consisting of the Chief Justice (*e*), possesses all the jurisdiction of the Courts of common law, equity, probate, divorce and bankruptcy in England (*f*), and exercises appellate jurisdiction over inferior Courts (*g*), except (*h*) where—(1) the truth of the accusation in a criminal, or the correctness of the claim, in a civil, case is admitted; (2) imprisonment is adjudged for failure to pay money, &c.; (3) in a civil case, both parties agree before judgment in writing that the decision of the inferior Court shall be final; (4) the accused has consented to a final determination of his case by the inferior Court.

An appeal lies to the Privy Council, where the sum in dispute is above £500 (*i*). Capital cases are to be tried by a jury of twelve, and the verdict must be unanimous; and other cases, civil and criminal, by a jury of seven (*k*).

A *Police Court* is held by a Stipendiary Magistrate, with civil jurisdiction up to £50 (*l*). The Police Court has criminal jurisdiction over all offences punishable by fine up to £50 and imprisonment up to twelve months (*m*).

**ST. HELENA: Political History.**—The Island of St. Helena was discovered by the Portuguese, and for a time held by the Dutch, until it was taken by the East India Company in 1651. A Charter for its administration was granted in 1661. It was not finally secured to the English until 1673, when Charles II. issued a new

(*b*) Stat. R. & O. Rev., 1904, vol. iv., "Falkland Islands," p. 1.

(*c*) *Falkland Islands Co. v. Reg.* (1864), 2 Moo. P. C. (N. S.) 286.

(*d*) No. 2 of 1876.

(*e*) No. 4 of 1901, s. 2.

(*f*) *Ibid.*, ss. 9, 10.

(*g*) *Ibid.*, s. 11.

(*h*) *Ibid.*, s. 27.

(*i*) *Ibid.*, s. 25. As to right of appeal from Colonial Courts in criminal cases, see *Falkland Islands Co. v. Reg.* (1863), 1 Moo. P. C. (N. S.) 299.

(*k*) *Ibid.*, s. 24.

(*l*) No. 5 of 1902, s. 5.

(*m*) *Ibid.*, s. 5.

Charter (*n*). By the East India Company's Act of 1833 the island was vested in the Crown (*o*).

**Law in Force.**—The local legislature enacted in 1868 that so much of the law of England as is applicable to local circumstances is and shall be in force in the island except in so far as it is varied by local legislation (*p*).

**Courts.**—The Governor acts as Chief Justice, by virtue of an Order in Council of April 5th, 1852, of the Supreme Court of St. Helena, which was established by Order in Council of February 13th, 1839 (*q*), in pursuance of the Government of India Act, 1833 (*r*). The Governor may have the assistance as assessors of members of the Executive Council (*s*). It is the Supreme Court of civil and criminal jurisdiction in the colony, and is a Court of ecclesiastical jurisdiction. An appeal lies to the Privy Council from final judgments for sums above £500 (*t*). The offices of Crown Prosecutor, Judge of Summary Court, and Police Magistrate are united in one official.

- (*n*) "Colonial Office List," *sub. tit.*  
 (*o*) 3 & 4 Will. IV. c. 85, s. 112.  
 (*p*) Ordinance No. 1 of 1868.  
 (*q*) Stat. R. & O. Rev., 1904, vol. xi.,  
 "St. Helena," pp. 1, 11.  
 (*r*) 3 & 4 Will. IV. c. 85.

- (*s*) Stat. R. & O. Rev., 1904, vol. xi.,  
 "St. Helena," p. 14.  
 (*t*) Order in Council of February  
 13th, 1839, *ubi cit. sup.* The Charter of  
 Justice for St. Helena will be found in  
 Parl. Pap. 1857--58, No. 388.

## CHAPTER VIII.

### AUSTRALASIA.

**COMMONWEALTH OF AUSTRALIA: Political History.**—In 1885 the Imperial Parliament passed an Act to constitute a Federal Council (*a*) of the Australian Colonies and dependencies with power to make laws in matters of common Australasian interest. The Act was not to come into operation until at least four Colonies had passed Acts to adopt it (*b*). Western Australia (*c*), Fiji (*d*), Queensland (*e*), Tasmania (*f*), and Victoria (*g*) adopted it in the same year. In 1888 South Australia agreed to join the council for two years (*h*). Nine Acts (*i*) in all were passed by the Council which ceased to exist upon the constitution of the Commonwealth Parliament (*k*).

The Commonwealth of Australia came into existence on January 1st, 1901, having been constituted by proclamation of September 17th, 1900 (*l*), under the Commonwealth of Australia Constitution Act, 1900 (*m*). New South Wales, Victoria, South Australia, Queensland, Tasmania, and Western Australia (*n*) were the original States. The Commonwealth Parliament is authorised to admit (*o*) or establish new States and to make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth (*p*).

(*a*) 48 & 49 Vict. c. 60.

(*b*) *Ibid.*, s. 30.

(*c*) 49 Vict., No. 24.

(*d*) No. 23 of 1885.

(*e*) 49 Vict., No. 16.

(*f*) 49 Vict., No. 10.

(*g*) 49 Vict., No. 843.

(*h*) 51 & 52 Vict., No. 440.

(*i*) For list, see Quick and Garran, "Annotated Constitution of the Australian Commonwealth," p. 377, and text in vol. vii. of Victorian Statutes, 1890.

(*k*) Clause 7 of the Constitution Act repeals the Federal Council Act but safeguards the laws passed by the

Council.

(*l*) St. R. & O. Rev., 1904, vol. i., "Australia, p. 1."

(*m*) 63 & 64 Vict. c. 12. The covering clauses (1—9) are referred to as "clause 1," *i.e.*; the sections (1—128) of the constitution itself, introduced by clause 9, as "s. 1," &c.

(*n*) Clause 3.

(*o*) Clause 6, and s. 121. New Zealand can thus enter the Commonwealth as an original State.

(*p*) Under No. 9 of 1905 British New Guinea (now Papua) has been accepted as a territory under the authority of the Commonwealth.

**Legislative Power of the Commonwealth.**—The Constitution of each State of the Commonwealth, subject to the Constitution, continues as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be, until altered in accordance with the Constitution of the State (*q*). The powers of the State Parliaments not by the Act exclusively vested in the Parliament of the Commonwealth or withdrawn from the State Parliaments continue as on the establishment of the Commonwealth or the admission of the State (*r*).

By the Constitution (*s*) the legislative power of the Commonwealth is vested in a Federal Parliament, which has power subject to the Constitution to make laws with respect to (*t*)—

- (i.) Trade and commerce with other countries and among the States ;
- (ii.) Taxation, but not so as to discriminate between States or parts of States ;
- (iii.) Bounties on the production or export of goods, but so that such bounties shall be uniform throughout the Commonwealth ;
- (iv.) Borrowing money on the public credit of the Commonwealth ;
- (v.) Postal, telegraphic, telephonic and other like services ;
- (vi.) The naval and military defence of the Commonwealth and of the several States, and the control of the forces to execute and maintain the laws of the Commonwealth ;
- (vii.) Lighthouses, lightships, beacons and buoys ;
- (viii.) Astronomical and meteorological observations ;
- (ix.) Quarantine ;
- (x.) Fisheries in Australian waters beyond territorial limits ;
- (xi.) Census and statistics ;
- (xii.) Currency, coinage and legal tender ;
- (xiii.) Banking, other than State banking, also State banking extending beyond the limits of the State concerned, the incorporation of banks, and the issue of paper money ;
- (xiv.) Insurance, other than State insurance ; also State insurance extending beyond the limits of the State concerned ;
- (xv.) Weights and measures ;
- (xvi.) Bills of exchange and promissory notes ;

(*q*) 63 & 64 Vict. c. 12, s. 106.

(*r*) *Ibid.*, s. 107.

(*s*) *Ibid*, clause 1.

(*t*) *Ibid.*, s. 51.

- (xvii.) Bankruptcy and insolvency;
- (xviii.) Copyrights, patents of inventions, and designs and trade marks;
- (xix.) Naturalisation and aliens;
- (xx.) Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth;
- (xxi.) Marriage;
- (xxii.) Divorce and matrimonial causes; and in relation thereto, parental rights, and the custody and guardianship of infants;
- (xxiii.) Invalid and old-age pensions;
- (xxiv.) The service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the Courts of the States;
- (xxv.) The recognition throughout the Commonwealth of the laws and the public acts and records, and the judicial proceedings of the States;
- (xxvi.) The people of any race, other than the aboriginal race in any State, for whom it is deemed necessary to make special laws;
- (xxvii.) Immigration and emigration;
- (xxviii.) The influx of criminals;
- (xxix.) External affairs;
- (xxx.) The relations of the Commonwealth with the islands of the Pacific;
- (xxxi.) The acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws;
- (xxxii.) The control of railways with respect to transport for the naval and military purposes of the Commonwealth;
- (xxxiii.) The acquisition, with the consent of a State, of any railways of the State on terms arranged between the Commonwealth and the State;
- (xxxiv.) Railway construction and extension in any State with the consent of that State;
- (xxxv.) Conciliation and arbitration for the promotion and settlement of industrial disputes extending beyond the limits of any one State;
- (xxxvi.) Matters in respect of which the Constitution makes provision until the Parliament otherwise provides;
- (xxxvii.) Matters referred to the Parliament of the Commonwealth



by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law ;

(xxxviii.) The exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the States directly concerned, of any power which can, at the establishment of this Constitution, be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australia ;

(xxxix.) Matters incidental to the execution of any power vested by this Constitution in the Parliament or in either house thereof or in the Government of the Commonwealth, or in the Federal Judiciary, or in any department or officer of the Commonwealth.

The Parliament has exclusive power to make laws for the peace, order and good government of the Commonwealth with respect to (u)—

(i.) The seat of government of the Commonwealth and all places acquired by the Commonwealth for public purposes ;

(ii.) Matters relating to any department of the public service the control of which is by this Constitution transferred to the executive Government of the Commonwealth ;

(iii.) Other matters declared by this Constitution to be within the exclusive powers of the Parliament.

**Law in Force.**—Every law in force in a Colony which has become or becomes a State, and relating to any matter within the powers of the Parliament of the Commonwealth, subject to the Constitution, continues in force in the State ; and, until provision is made in that behalf by the Parliament of the Commonwealth, the Parliament of the State has the former powers of alteration and repeal in respect of any such law (x).

In case of inconsistency between the State and Commonwealth laws, the latter prevails (y).

The Constitution and Commonwealth laws are binding in every State and part of the Commonwealth notwithstanding anything in the State laws, and the latter are in force in all British ships excepting the King's ships of war whose first port of clearance and port of destination are in the Commonwealth (z).

(u) 63 & 64 Vict. c. 12, s. 52.

(x) Sect. 108.

(y) Sect. 109.

(z) 63 & 64 Vict. c. 12, clause 3.

**Federal Courts.**—The judicial power of the Commonwealth is vested in a Federal Supreme Court, called the High Court of Australia, and in such other Federal Courts as the Parliament creates, and in such other Courts as it invests with federal jurisdiction. The High Court consists of a Chief Justice, and so many other Justices, not less than two, as the Parliament prescribes (*a*).

The Justices of the High Court and of the other Courts created by the Parliament are appointed by the Governor-General in Council, and are not removable except by the Governor-General in Council, on an address from both Houses of the Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity (*b*).

The High Court has jurisdiction, with such exceptions and subject to such regulations as the Parliament prescribes, to hear and determine appeals from all judgments, decrees, orders, and sentences—(i.) of any Justice or Justices exercising the original jurisdiction of the High Court; (ii.) of any Federal Court, or Court exercising federal jurisdiction; or of the Supreme Court of any State, or of any other Court of any State from which at the establishment of the Commonwealth an appeal lies to the King in Council (*c*); (iii.) of the Inter-State Commission (*d*), but as to questions of law only, and the judgment of the High Court in all such cases is final and conclusive.

But no exception or regulation prescribed by the Parliament is to prevent the High Court from hearing and determining any appeal from the Supreme Court of a State in any matter in which at the establishment of the Commonwealth an appeal lay from such Supreme Court to the Privy Council (*e*). Until the Parliament otherwise provides, the conditions of and restrictions on appeals to the

(*a*) 63 & 64 Vict. c. 12.

(*b*) *Ibid.*, s. 72.

(*c*) The immediate purpose of the insertion of these words was to include the appellate tribunal of South Australia, consisting of the Governor in Council, although it by no means follows that in their application they are confined to that tribunal. See *Parkin and Cowper v. James and*

*Others*, [1903] 2 Australia C. L. R., at p. 330.

(*d*) See *ibid.*, s. 101.

(*e*) *Ibid.*, s. 73. The Commonwealth Parliament cannot take away the right to appeal to the Privy Council against a judgment of a State Supreme Court which is not taken away by the Commonwealth Act: *Webb v. Outrim* [1907] J. & C. 81.

King in Council from the Supreme Courts of the several States shall be applicable to appeals from them to the High Court (*f*).

No appeal is to be permitted to the King in Council from a decision of the High Court upon any question, howsoever arising, as to the limits *inter se* of the constitutional powers of the Commonwealth and those of any State or States, or as to the limits *inter se* of the constitutional powers of any two or more States, unless the High Court shall certify that the question is one which ought to be determined by His Majesty in Council (*g*).

The High Court may so certify if satisfied that for any special reason the certificate should be granted, and thereupon an appeal shall lie to His Majesty in Council on the question without further leave. Except as provided in this section, the Constitution does not impair any right which the King may be pleased to exercise by virtue of His Royal prerogative to grant special leave of appeal from the High Court to His Majesty in Council. The Parliament may make laws limiting the matters in which such leave may be asked, but proposed laws containing any such limitation shall be reserved by the Governor-General for His Majesty's pleasure (*h*).

In all matters—(i.) arising under any treaty; (ii.) affecting consuls or other representatives of other countries; (iii.) in which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party; (iv.) between States, or between residents of different States, or between a State and a resident of another State; (v.) in which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth, the High Court has original jurisdiction (*i*).

The Parliament may make laws conferring original jurisdiction on the High Court in any matter—(i.) arising under the Constitution, or involving its interpretation; (ii.) arising under any laws made by the Parliament; (iii.) of Admiralty and maritime jurisdic-

(*f*) 63 & 64 Vict. c. 12, s. 73. Leave to appeal to the Privy Council from a judgment of the High Court is only granted to the appellant under the same circumstances as in the case of petitions to appeal from the Supreme Court of Canada: *Daily Telegraph Newspaper Co. v. McLaughlin* [1904] A. C. 777; and see *Victoria Railway*

*Commissioners v. Brown* [1906] A. C. 381, where the petitioners had themselves in the first instance elected to appear to the High Court rather than the Privy Council.

(*g*) *Ibid.*, s. 74.

(*h*) *Ibid.*, s. 74.

(*i*) *Ibid.*, s. 75.

tion; (iv.) relating to the same subject-matter claimed under the laws of different States (*k*).

With respect to any of the matters mentioned in the last two sections the Parliament may make laws—(i.) defining the jurisdiction of any Federal Court other than the High Court; (ii.) defining the extent to which the jurisdiction of any Federal Court shall be exclusive of that which belongs to or is invested in the Courts of the States; (iii.) investing any Court of a State with federal jurisdiction (*l*).

The Parliament may make laws conferring rights to proceed against the Commonwealth or a State in respect of matters within the limits of the judicial power (*m*).

The federal jurisdiction of any Court may be exercised by such number of Judges as the Parliament prescribes (*n*).

The trial on indictment of any offence against any law of the Commonwealth is to be by jury, and every such trial is to be held in the State where the offence was committed, and if the offence was not committed within any State the trial is to be held at such place or places as the Parliament prescribes (*o*).

**High Court of Australia.**—The only Federal Court as yet constituted is the High Court of Australia, originally composed of a Chief Justice and two Puisne Judges, with a statutory procedure (*p*). There are four Puisne Judges in addition to the Chief Justice. The seat of the High Court is at the seat of government, or, till that is established, at such place as the Governor-General appoints (*q*). Provision is made for the exercise of the Court's jurisdiction by single justices sitting in chambers, or by the single judges of the State Supreme Courts, which are invested with federal jurisdiction to hear applications which might be made to a High Court justice in chambers in all matters pending in the High Court, not being matters in which that Court has exclusive jurisdiction; and by a full Court for which two justices are a quorum for hearing appeals from judges of federal jurisdiction (*r*), and three are a quorum for hearing applications for leave to appeal to the High Court from judgments of State Supreme Courts or any other

(*k*) 63 & 64 Vict. c. 12, s. 76.

(*l*) *Ibid.*, s. 77.

(*m*) *Ibid.*, s. 78.

(*n*) *Ibid.*, s. 79.

(*o*) *Ibid.*, s. 80.

(*p*) Judiciary Act, 1903 (No. 6 of

1903); Procedure Act, 1903 (No. 7, amended by No. 13, of 1903).

(*q*) Judiciary Act, 1903, s. 10.

(*r*) See Judiciary Act, 1903, ss. 16—21.

Court from which, at the establishment of the Commonwealth an appeal lay to the King in Council, or applications in questions as to the limits *inter se* of the constitutional powers of the Commonwealth in a State, or of two or more States for leave to appeal to the King in Council. The powers of the Court extend to the whole Commonwealth, and provision is made for the enforcement of process, for the awarding of costs, and the exercise of jurisdiction over absent defendants (s).

**Federal Jurisdiction of High Court.**—The original jurisdiction of the Court comprises, in addition to that conferred by the Commonwealth Act (t), all matters arising under the Constitution(u), and it has power to issue writs of mandamus, prohibition, and ouster of office (x). The appellate jurisdiction of the Court embraces appeals from justices of the High Court (y); appeals from judgments of the State Supreme Courts or other Courts from which, at the establishment of the Commonwealth, appeal lay to the Crown in Council, whether final or interlocutory, where the sum or matter at issue amounted to the value of 300*l.*, or involving questions concerning property or civil right of the same value, or affecting the status of persons under the laws relating to aliens, marriage, divorce, bankruptcy or insolvency, except that an appeal from an interlocutory judgment requires the leave of the Supreme Court or the High Court; judgments, final or interlocutory, civil or criminal, from which the High Court gives special leave to appeal; and judgments of a State Supreme Court exercising federal jurisdiction in a matter pending in the High Court; including judgments given before the Act in which an appeal is available, and it is not necessary in any case to obtain the leave of the State Supreme Court (z).

The High Court has jurisdiction exclusive of the State Courts in (a) Matters arising directly under any treaty; (b) Suits between States or between persons being sued on behalf of different States or between a State and a person suing or being sued on behalf of another State; (c) Suits by the Commonwealth or any person suing on its behalf against a State, or any person being sued on behalf of a State; (d) Suits by a State or any person suing on its behalf against the Commonwealth, or any person being sued on behalf of the Common-

(s) Judiciary Act, 1903, Part III.

(t) s. 75. See p. 284.

(u) s. 30.

(x) s. 33.

(y) s. 34.

(z) s. 35.

wealth; (e) Matters in which a writ of mandamus or prohibition is sought against an officer of the Commonwealth or a Federal Court (a).

**Federal Jurisdiction of State Courts.**—The State Supreme Courts have federal jurisdiction within the limits of their several jurisdictions in all matters in which the High Court has or can have original jurisdiction except as above provided, subject to the following limitations: (a) Every decision of a State Supreme Court or Court of a State from which at the establishment of the Commonwealth an appeal lay to the Crown in Council is final except so far as an appeal lies to the High Court; (b) where an appeal lies to a State Supreme Court from a Court of that State an appeal also may be brought to the High Court; (c) the High Court may grant leave to appeal to it from a Court of a State notwithstanding the law of that State prohibits any appeal; and (d) the federal jurisdiction of a Court of summary jurisdiction of a State is only exercisable by a stipendiary, or police or special Magistrate, or some Magistrate of the State specially so authorised by the Governor-General (b). The High Court may order the removal of a cause arising under the Constitution or involving its interpretation which is pending in a State Court on appeal, to the High Court, and all further proceedings therein are according to the course and practice of the High Court, which can also remit such cases improperly removed to the same State Court (c). It may remit any matter pending before it, whether originally begun there or not, for trial to any Court of a State which has federal jurisdiction with regard to the subject-matter and the parties (d). Provision is also made by the Act that persons entitled to practise as barristers or solicitors in any State have the same right in any Federal Court, and the Crown solicitor for the Commonwealth has the rights and privileges of a solicitor in every State (e). The principal Registry of the High Court is at the seat of the Court, and in every State except that in which the seat of the Court is situated a district Registry of the Court is established (f), with registrars, a marshal, and marshal's deputies and officers.

Suits against the Commonwealth may be brought by persons in the High Court or in the Supreme Court of the State where the claim arose; and by a State in the High Court. Suits against a

(a) Judiciary Act, 1903, s. 38.

(d) s. 45.

(b) s. 39. See *Webb v. Outtrim* [1907] A. C. 81.

(e) ss. 49—50.

(c) ss. 40—46.

(f) s. 11.

State in matters of federal jurisdiction may be brought in the Supreme Court of the State or in the High Court, and suits between States may be brought in the High Court (*g*).

In criminal cases for offences against the laws of the Commonwealth the State laws regulate the proceedings, and the State Courts have jurisdiction if the offences were committed within their jurisdiction or the persons charged may lawfully be tried there for offences committed elsewhere, except that the preliminary proceedings must be taken before the magistrates possessing summary federal jurisdiction (*h*). An offence which is committed in several States may be dealt with in any one of those States (*i*). At the trial of such indictable offences, either on the application of the accused person or at the discretion of the Court, questions of law may be reserved for the consideration of a full Court of the High Court or of a full Court of the State Supreme Court (*k*) ; and where the accused person has been convicted of such an offence and the Court arrests judgment, an appeal is given against such arrest to the same tribunals (*l*), but, except as above provided, and in the case of error apparent on the face of the proceedings, no appeal lies to the High Court from a judgment or sentence pronounced on the trial of such offences without the special leave of the High Court (*m*).

The laws of each State, including those relating to procedure, evidence, and competency of witnesses, except as otherwise provided by the Constitution or the laws of the Commonwealth, bind all Courts exercising federal jurisdiction in that State. So far as these laws are not applicable or adequate, the common law of England, as modified by the Constitution and by the statute law of the State in which the Court exercising jurisdiction in the particular case is held, so far as it is applicable and not inconsistent with the Constitution and the laws of the Commonwealth, governs all Courts exercising federal jurisdiction in civil and criminal matters (*n*). Provision is made as to venue in suits for penalties, taxes, and forfeitures, and the Justices of the High Court are empowered to make rules of Court regulating the practice and procedure of the High Court and other Federal Courts and, where necessary, in Courts of federal

(*g*) Judiciary Act, 1903, Part IX.

(*h*) *Ibid.*, s. 68.

(*i*) s. 70.

(*k*) ss. 72—76.

(*l*) s. 76.

(*m*) s. 77.

*n*) ss. 79, 80.

jurisdiction, and prescribing the extent to which the provisions of the Act are to be applicable to the Courts of Territories of the Commonwealth, subject to the approval of Parliament(o). Rules of Court and appropriate forms are included in the High Court Procedure Act(p).

**New South Wales: Political History.**—The name of New South Wales was given by Captain James Cook, in 1770, to the Eastern part of Australia, which included the present States of New South Wales, Victoria and Queensland. The first Governor was Captain Phillip, R.N., who began his administration in 1788.

The history of the government of the Colony since that time may be roughly divided into four periods: (1) Of military and despotic government from 1788 to 1828, suited to the circumstances of a penal settlement; (2) from 1828 to 1842(q) under a Governor and Legislative Council appointed by the Crown; (3) from 1842 to 1855(r) during which period the Legislative Council was partially representative; and (4) from 1855(s) when full responsible government was inaugurated by the Constitution Act.

**Laws in Force.**—All laws in force in England on July 25, 1828, not inconsistent with any Charters, Letters Patent, or Order in Council, were applied to the Colony(t); and there are Imperial statutes made applicable to the Colony and Acts of the local Legislature.

**Courts.**—The *Supreme Court* was constituted under the Imperial Statute 4 Geo. IV. c. 96, by the Charter of Justice (October 13th, 1828)(u); and its constitution was further regulated by another Imperial Statute—the Australian Courts Act, 1828(v). It consists at present of a Chief Justice and six Puisne Judges, including the Chief Judge in equity, the Judge in the matrimonial causes jurisdiction, and the Judge in bankruptcy and probate; is a Court of Record; and possesses generally in its several departments the common law powers of the King's Bench Division (as before the Judicature Acts), the equitable powers of the Chancery Division and the powers of the Probate, &c., Division in England. Provision is made for the hearing

(o) Judiciary Act, 1903, ss. 82—87.

(p) No. 7 of 1903, Schedule.

(q) See 4 Geo. IV. c. 96: 9 Geo. IV. c. 83; Charter of Justice, 1823.

(r) See 5 & 6 Vict. c. 76; 13 & 14 Vict. c. 59.

(s) See 18 & 19 Vict. c. 54, and Constitution Act in schedule thereto.

(t) 9 Geo. IV. c. 83, s. 24. See Stephen's "Constitution of the Supreme Court of New South Wales"; Stat. R. & O. Rev. 1904, vol. i., "Australia," p. 10; and *Quan Yick v. Hinds* (1905), 2 Australian C. L. R. 345.

(u) *Ibid.*

(v) 9 Geo. IV. c. 83.



of appeals from individual Judges by two or more Judges of the Supreme Court *in banco*. In addition to the appeal to the High Court of Australia under the Federal Constitution, an alternative appeal from the Supreme Court (except when exercising Federal jurisdiction) still lies to the Privy Council (*x*) in respect of judgments for a sum exceeding, or a civil right or claim to property amounting in value to, £500 (*y*). Appeals in the Federal jurisdiction are to the High Court of Australia only, unless the case were pending at the time of the passing of the (Commonwealth) Judiciary Act, 1903 (*z*). Besides the Supreme Court there is also a system of Local Land Boards and a Land Court of Appeal (*a*). *Circuit Courts*, with the general powers of the English Courts of Oyer and Terminer and Nisi Prius, are held before Judges of the Supreme Court. Proceedings before *magistrates*, and in the *District Courts* correspond both in constitution and in jurisdiction to those of the English magistrates and County Courts. The Inferior Courts also include *Courts of General and Quarter Sessions* presided over by a District Court Judge with subordinate criminal jurisdiction.

The whole of the Statutes relating to the Supreme Court in its several jurisdictions, Magistrates and District Courts, have been consolidated and amended during the last few years (*b*).

There are also other Courts and bodies of Commissioners exercising novel statutory jurisdictions (*c*).

The Chief Justice usually holds the position of Judge Commissary

(*x*) See Order in Council, November 13th, 1850; Stat. R. & O. Rev., 1904, vol. vi., "Judicial Committee," p. 64.

(*y*) And see *supra*, pp. 283, 284, as to appeals to the High Court of Australia.

(*z*) No. 6 of 1903, s. 39; and see Colonial Sugar Refining Co., Ltd. v. Irving, [1905] A. C. 369.

(*a*) See 48 Vict. No. 18; 50 Vict. No. 21, and Minister for Lands v. Wilson, [1901] A. C. 315.

(*b*) See the Index prefixed to the official edition of Statutes for 1905, p. xi., under the headings "Supreme Court," "Equity," "Bankruptcy," "Matrimonial Causes," "Wills," "District Courts," "Justices," "Crimes," &c.

Although up to the end of 1905 the procedure of the Supreme Court (in its common law jurisdiction) continued to be modelled on the Common Law Procedure Acts, it is probable that in a short time the procedure which prevails in the other five States of the Commonwealth, modelled on the Judicature Acts, will be introduced.

(*c*) See, for instance: Industrial Arbitration Act, 1901 (1901, No. 59); Crown Lands Act, 1884 (48 Vict. No. 18), ss. 11—20; Crown Lands Act, 1889 (53 Vict. No. 21), ss. 8, 9; Conveyancing and Law of Property Act, 1898 (1898, No. 17), Pt. II.; Darling Harbour Wharves Resumption Act, 1900 (1900, No. 10), s. 6.

of the Court of Vice-Admiralty, established in 1787 for New South Wales by commission under the seal of the High Court of Admiralty (*d*). This Court does not appear to have been replaced by a Colonial Court of Admiralty (*e*). The affairs of Norfolk Island are also administered by the Governor of New South Wales under Order in Council of October 18th, 1900 (*f*).

**Queensland: Political History.**—As early as 1842 (*g*) the Imperial Parliament authorised the Crown to form by Letters Patent a Colony separate from the northern portion of New South Wales. This power was distinctly preserved in the Constitution Act (*h*) but it was not until 1859 that Letters Patent were issued erecting the Moreton Bay district into a separate Colony under the name of Queensland. In 1861 an Act (*i*) was passed to validate and effectuate the Order in Council establishing the Government of Queensland and to remove all doubts as to the legality of the arrangements made by the Crown in the erection of the Colony. The Queensland Parliament passed an Act in 1867 (*k*), embodying the Orders in Council with slight modifications which define the present constitution of the State.

**Law in Force.**—The law of New South Wales in force when Queensland was separated was continued in the new Colony (*l*).

**Courts.**—The system somewhat resembles that of New South Wales, but the procedure in the *Supreme Court* is modelled on the Judicature Acts instead of the Common Law Procedure Acts. The Supreme Court, with similar powers to those of New South Wales, consists of a Chief Justice, two Puisne Judges, and the Judge of the Northern District and the Judge of the Central District, the two last Judges having the powers of a single Judge of the Supreme Court. There are *Circuit Courts* and *District Courts* corresponding with the Circuit Courts and District Courts of New South Wales. An appeal lies from the District Court to the Supreme Court, held before not less than two Judges. The law as to justices is similar

(*d*) See Stephen's "Constitution of the Supreme Court of New South Wales," p. 39.

(*e*) See the Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. c. 27), ss. 16, 18, Sched. I., Sched. II. (referring to Vice-Admiralty Courts Acts, 1863 & 1867); Stat. R. & O. Rev., 1904, Index, p. 99; and *infra*,

p. 294.

(*f*) St. R. & O. Rev., 1904, vol. i., "Australia," p. 20.

(*g*) 5 & 6 Vict. c. 76, amended by 13 & 14 Vict. c. 59.

(*h*) 18 & 19 Vict. c. 54, s. 7.

(*i*) 24 & 25 Vict. c. 44.

(*k*) 31 Vict. No. 38.

(*l*) 31 Vict. No. 38, s. 33.

to English law (*m*). An appeal lies from the Supreme Court to the Privy Council under the same circumstances and on the same conditions as from New South Wales (*n*), except that the security required is not to exceed £500. It may also be noted that by the Constitution Act of 1867 (*o*) an appeal lies to the Privy Council as to a vacancy in the Legislative Council.

British New Guinea was a dependency of Queensland, but is now under the direct control of the Commonwealth of Australia.

**South Australia: Political History.**—This State was established as a British Province by Statute in 1834 (*p*) but not proclaimed as such until 1836 (*q*). The statute authorised the appointment of colonisation commissioners to have the control of the Crown lands. South Australia became a Crown Colony in 1841, and in the following year the Imperial Parliament passed a statute (*r*) to provide for its government by a nominated Legislative Council. After various changes in the Constitution responsible Government was established in 1857. A strip of territory known as "No Man's Land" was added to the Colony in 1861 (*s*), and the portion of New South Wales known as the Northern Territory by Letters Patent in 1863.

**Law in Force.**—The common law of England on the day when the Colony was proclaimed to be a British Province, became, so far as applicable to the circumstances of the Colony, the common law of the Colony (*t*). The province was expressly exempted from laws enacted before that date in any other part of Australia (*u*).

**Courts.**—The legal tribunals consist of the *Supreme Court*, presided over by a Chief Justice and two Puisne Judges, law and equity being administered concurrently, as under the Judicature

(*m*) See the following amongst other Statutes: Supreme Court Acts, 1867—1903; Judicature Acts; District Court Acts, 1891 and 1897. These Acts, which are very numerous, may be found by referring to the Index from time to time printed with the official edition of the Statutes, and now prefixed to each sessional volume, under headings "Supreme Court," "Practice," "District Courts," "Justices," "Admiralty," &c.

(*n*) See Order in Council, June 30th, 1860; 24 & 25 Vict. c. 44; Stat. R. &

O. Rev., 1904, vol. vi., "Judicial Committee," p. 77; and *supra*, pp. 283, 284, as to appeals to the High Court of Australia; and see Colonial Sugar Refining Co. v. Irving, [1905] A. C. 369.

(*o*) 31 Vict. No. 38, s. 24.

(*p*) 4 & 5 Will. IV. c. 95.

(*q*) December 28th.

(*r*) 5 & 6 Vict. c. 61.

(*s*) 24 & 25 Vict. c. 44.

(*t*) "Jour. of Comp. Leg." vol. ii. p. 79.

(*u*) 4 & 5 Will. IV. c. 95.

Acts in England; *Circuit Courts*, presided over by Judges of the Supreme Court; a *Court of Insolvency*, presided over by a Commissioner who is a stipendiary magistrate or by a Judge of the Supreme Court; *Local Courts of Insolvency*, under stipendiary magistrates; *Local Courts of Civil Jurisdiction*, under stipendiary magistrates; and of *Limited Jurisdiction*, under justices of the peace; and *Police Magistrates Courts*; a *Court of Marine Inquiry* the Judges of which are the Judges of the Supreme Court; *Boards of Conciliation* whose awards are enforceable by the ordinary Courts (*v*); and a *Court of Industrial Appeals*, consisting of a Judge of the Supreme Court (*x*). There is an appeal from the Supreme Court to the Court of Appeals constituted of the Governor and Executive Council, with the exception of the Attorney-General (*y*), but the Court has practically fallen into desuetude. An appeal still lies to the Privy Council under the same circumstances and on the same conditions as from Queensland (*z*).

**Victoria : Political History** (*a*).—By an Act passed in 1850 (*b*), the Imperial Parliament authorised the Legislative Council of New South Wales to separate certain territories within the district of Port Phillip, including the town of Melbourne, and form them into the Colony of Victoria. In the following year the local Legislature passed two complementary Acts in reference to the judicial administration (*c*) and the constitution of the Legislative Council (*d*). The restrictions on the powers and functions of the Legislative Council were similar to those of the councils of New South Wales, Van Diemen's Land (Tasmania) and South Australia, which were constituted by the same Act. Responsible government was granted under the Victorian Constitution Act, 1855 (*e*).

(*v*) See Index to South Australian Statutes (1894), under headings "Supreme Court," "Local Courts," "Insolvency," "Justices," "Marine Board"; Conciliation Act, 1894 (No. 538); Courts of Marine Inquiry Act, 1897 (No. 681). No general Index to the Statutes seems to have been published since 1894.

(*x*) Act No. 915 of 1906.

(*y*) No. 31 of 1855-6, s. 18.

(*z*) See *supra*, and Order in Council, June 9th, 1860, Stat. R. & O. Rev. 1904, vol. vi., "Judicial Committee,"

p. 85; and as to appeals to the High Court of Australia, see *supra*, pp. 283, 284; and see Colonial Sugar Refining Co., Ltd. v. Irving, [1905] A. C. 369.

(*a*) The constitutional law is fully dealt with in Jenks's "The Government of Victoria," while a more purely historical work has been published by H. G. Turner.

(*b*) 13 & 14 Vict. c. 59.

(*c*) 14 Vict. No. 45.

(*d*) 14 Vict. No. 47.

(*e*) 18 & 19 Vict. c. 55.

**Law in Force.**—The law in force in New South Wales on July 1st, 1851, was continued upon the separation of the Colony (*f*).

**Courts.**—The arrangement of Courts is similar to that existing in other States: *Supreme Court, Assizes, County Courts, Justices.* Law and equity are administered concurrently in the Supreme Court, as under the Judicature Acts in England. There are also a Court of Insolvency (having the powers of the Supreme Court), Local Courts of Mines, and Courts of Marine Inquiry (*g*). Victoria is placed with New South Wales (*supra*, p. 291), in the First Schedule of exception to the Colonial Courts of Admiralty Act, 1890. The local appeal to the Privy Council is allowed on the same conditions as from New South Wales (*h*), except that the appealable amount is £1,000 (*i*).

**Tasmania : Political History.**—This island was discovered by Tasman in December, 1642, who named it "Van Diemen's Land," after the then governor of the Dutch Indian possessions. It was partly explored by Captain Cook, and in 1803 a convict settlement was formed from Sydney, on the site of the present capital of Hobart, by Lieutenant Bowen. In 1825 it was severed from New South Wales, in which it had previously been included, and constituted a separate colony. In 1853 transportation of convicts was abolished and its name was changed to Tasmania. Responsible government was granted in 1855 (*k*).

**Law in Force.**—The law of England on July 25th, 1828, was made applicable to the colony, except in so far as it was inconsistent with any Charter, Letters Patent or Order in Council made under the Act making the provision (*l*).

**Courts.**—(*l*) The *Supreme Court*, constituted under 9 Geo. IV. c. 83,

(*f*) Acts Interpretation Act, 1890, s. 3.

(*g*) See the Victorian Statutes, official edition of 1890, under the headings "Supreme Court," "County Court," "Justices," "Mines," "Insolvency," "Admiralty," "Crimes," "Criminal Law," "Marine," &c.

The Victorian Statutes were consolidated in 1890, and the 1890 edition consist of seven volumes, vol. i. containing an historical account, of the legislation, and vol. vii. an Index. In

each sessional volume there is now printed an Index of Statutes passed after 1890 up to the current year.

(*h*) See *supra*, and Order in Council, June 9th, 1860; Stat. R. & O. Rev., 1904, vol. vi., "Judicial Committee," p. 90.

(*i*) Supreme Court Act, 1890, s. 231. As to appeals to the High Court of Australia, see *supra*.

(*k*) 4 Geo. IV. c. 96, s. 44; 18 Vict. No. 17; Stat. R. & O. Rev., 1904, Index, 666.

(*l*) 9 Geo. IV. c. 83, s. 24.

consists of a Chief Justice and two Puisne Judges; a third Judge was appointed in 1886 (o), but the appointment was discontinued in 1895 (p). It possesses the jurisdiction of the English common law Courts; and equitable, divorce, probate and bankruptcy jurisdiction. Its jurisdiction, generally, is similar to that of New South Wales, but by the Legal Procedure Act, 1903 (3 Edw. VII. No. 19), the principles of the English Judicature Act have been introduced, and law and equity are administered concurrently. An appeal lies from its decision, in civil cases for sums above £1,000, to the Privy Council; there is also a right of appeal to the High Court of Australia (q). The Supreme Court exercises supreme criminal jurisdiction throughout the Colony (r). The Supreme Court has also a jurisdiction in investigating and deciding upon claims to grants of land from the Crown (s).

(II.) Criminal jurisdiction of the class that generally belongs to Quarter Sessions is also exercised by *General Sessions of the Peace* (t), *District Justices* (u), and a Chief Police Magistrate (x).

(III.) *Local Courts of Civil Jurisdiction*.—(a) *Courts of Request*, held before Commissioners (y) appointed by Governor in Council (z), are Courts of Record (a), with jurisdiction over recovery of debts up to £50 (b), with the usual exceptions, e.g., actions as to title to land, libel, slander, &c. (c), and over actions of ejectment for recovery of small tenements (d), cases of partnership and legacies up to £50 (e). An appeal lies on points of law to the Supreme Court (f) in the form of a special case (g). (b) *General Sessions of the Peace* (as to which see also (II.), *supra*), specially appointed by the Governor in Council,

(o) Under 50 Vict. (T.) No. 36.

(p) 59 Vict. (T.) No. 56; "Jour. of Comp. Leg.," vol. i., 30.

(q) Charter of Justice, March 4th, 1831; Stat. R. & O. Rev., 1904, vol. i., "Australia," p. 50; and as to appeals to the High Court of Australia, see *supra*, pp. 283, 284; and see Colonial Sugar Refining Co. Ltd. v. Irving, [1905] A. C. 369.

(r) 9 Geo. IV. c. 83, s. 4. See 37 Vict. (T.) No. 6, and 45 Vict. (T.) No. 14, ss. 7—11 of which deal with Crown Cases Reserved.

(s) Claims to Grants of Land Act, No. 3 (22 Vict. No. 10).

(t) See 8 Vict. (T.) No. 13; 21

Vict. (T.) No. 10; 31 Vict. (T.) No. 10; 60 Vict. (T.) No. 9; and also 37 Vict. (T.) No. 6 and 45 Vict. (T.) No. 14.

(u) 47 Vict. (T.) No. 7; 48 Vict. (T.) No. 1; 56 Vict. (T.) No. 3.

(x) 20 Vict. (T.) No. 23.

(y) Local Courts Act, 1896 (60 Vict. No. 48).

(z) *Ibid.*, s. 10.

(a) *Ibid.*, s. 14.

(b) *Ibid.*, s. 8.

(c) *Ibid.*, s. 32 (1).

(d) *Ibid.*, ss. 116 *et seq.*

(e) *Ibid.*, s. 32 (3).

(f) *Ibid.*, s. 123.

(g) *Ibid.*, s. 124.

exercise similar jurisdiction, &c. (h). (c) The *Courts of Hobart and Launceston*, held before a police magistrate, have a similar jurisdiction (but limited as regards debt to £10) (i). (d) Similar jurisdiction (in debt from £10 up to £100 (k), and in other cases above mentioned without limit, save one of £100 in ejectment (l), or exception) may be exercised by the *Supreme Court* on the request of the Governor in Council (m). The *Local Courts Act*, 1896, has been amended by Acts of 1900 and 1902 (n).

The uninhabited island of Macquarie appears to form part of Tasmania (o).

**Western Australia : Political History.**—The first Imperial statute in which the name "Australia" was used in reference to the continent is one applying to Western Australia (p). In 1850 an Act (q) was passed to authorise the formation of a Legislative Council, but it was not until 1870 that the necessary application was made by the Colony. Responsible government was granted in 1890 (r).

**Law in Force.**—The common law of England was introduced on the foundation of the Colony in 1829 (s).

**Courts.**—The judicial constitution consists of the Supreme Court, administering law and equity concurrently, as under the Judicature Acts in England, local Courts, and other inferior Courts held before the justices of the peace (t). There is also a Court of Arbitration for the settlement of industrial disputes, and Courts of Marine Inquiry (u). There is an appeal to the Privy Council (v) under

(h) *Local Courts Act*, 1896, s. 12.

(i) *Ibid.*, s. 19.

(k) *Ibid.*, s. 17.

(l) *Ibid.*, s. 32 (4).

(m) *Ibid.*, s. 17.

(n) 64 Vict. No. 31; 2 Edw. VII. No. 19. The latest Index (to 1901) of the Tasmanian Statutes is contained in Stops' edition of the Statutes (1904), and includes Acts of the defunct Federal Council of Australasia.

(o) Curnin's "Index to Laws of New Zealand" (14th ed., 1905), p. 6.

(p) 10 Geo. IV. c. 22.

(q) 13 & 14 Vict. c. 59, s. 9.

(r) 53 & 54 Vict. c. 26.

(s) "Jour. of Comp. Leg.," i., N. S., p. 70.

(t) See the Index to the official edition of the Western Australian Statutes, under the headings "Supreme Court," "Local Courts," "Justices," "Criminal Law," &c. The latest complete historical table and Index seems to have been published in 1896, but an Index to all the Statutes from 1832 to date is now printed at the end of each sessional volume of the Statutes.

(u) Industrial Conciliation and Arbitration Act, 1902 (1 & 2 Edw. VII. No. 21); Navigation Act, 1904 (No. 39), ss. 20—29.

(v) See Order in Council, October 11th, 1861; Stat. R. & O. Rev., 1904, vol. vi., "Judicial Committee," p. 93; and 24 Vict. No. 15, s. 29).

the same circumstances and on the same conditions as from New South Wales (*x*).

**Papua (formerly British New Guinea).**—British New Guinea was erected into a separate possession by Letters Patent of June 8th, 1888, under the authority of the British Settlements Act, 1887 (*y*). The common law of England was introduced by the Courts and Laws Adopting Ordinance (amended) of 1889 (*z*). The judicial arrangements consist of a Central Court, and Courts of Petty Sessions. At first a dependency of Queensland, the territory is now under the direct control of the Commonwealth of Australia, and is known as the territory of Papua (*a*). In civil matters, subject to new arrangements being made by the Commonwealth Government, there is an appeal to the Supreme Court of Queensland where the amount at stake is over £100; and in Admiralty matters an appeal lies irrespective of value (*b*). There is an appeal to the Privy Council from Queensland on the ordinary conditions (*c*). British New Guinea was included in the Pacific Ocean Order in Council of August 18th, 1877 (*d*); and the Order of March 15th, 1893 (*e*).

**FIJI ISLANDS.**—The Fiji Islands were erected into a Colony, and provision was made for their government, by Charter of January 2nd, 1875. The island of Rotuma, with its dependencies, was annexed to Fiji by Letters Patent dated December 17th, 1880 (*f*).

**Law in Force.**—The law in force in the Fiji Islands consists of English law in force in England at the date of the Charter, January 2nd, 1875, so far as suited to the circumstances of the Colony, and subsequent Imperial Acts (*g*) or Orders extending to the Colony and local Ordinances.

**Courts.**—(I.) The *Supreme Court*, held before the Chief Justice (*h*), is a Court of Record (*i*), has within the Colony the jurisdiction of the

(*x*) See *supra*, pp. 283, 284, as to appeals to the High Court of Australia.

(*y*) 50 & 51 Vict. c. 54.

(*z*) Ordinance No. vi. of 1889.

(*a*) Papua Act, 1905 (No. 9 of 1905).

(*b*) See R. & O. Stat. 1891, p. 23; Stat. R. & O. Rev. (1st ed.), vol. i., p. 482.

(*c*) Stat. R. & O. Rev., 1904, vol. i., "Australia," pp. 68—70; Index, p. 64; Laws and Ordinances of British New Guinea (Brisbane, 1898).

(*d*) Hert., xiv., 871.

(*e*) *Ibid.*, xix., 570; Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 484.

(*f*) Stat. R. & O. Rev., 1904, vol. iv., "Fiji," pp. 1, 7; Hertslet's Treaties, vol. xv., p. 988.

(*g*) See 41 & 42 Vict. c. 61.

(*h*) Ordinance No. 14 of 1875, ss. 1, 5.

(*i*) *Ibid.*, s. 3.



English Courts of common law (*k*), equity (*l*), probate and divorce (*m*), and is also a Colonial Court of Admiralty (*n*). Its jurisdiction may be limited as to the districts or class of persons over whom it is exercisable by proclamation by the Governor (*o*). Certain districts of Viti Levu are still, in virtue of this provision, under Resident Commissioners appointed by the Governor, but these have no jurisdiction over white persons other than as stipendiary magistrates (*p*). In suits for dissolution of marriage or separation where the petitioner is—(a) a native wife; (b) a half-caste wife; (c) a native husband; (d) a half-caste husband married to a native or half-caste, evidence is taken by permanent Commissioners of the Supreme Court and forwarded to the Supreme Court, which remits directions to the Commissioner in each case as to the judgment to be given (*q*). "Native" means aboriginal native of Fiji, or Polynesia, or India, or any Pacific Island (*r*). Stipendiary magistrates are Supreme Court Commissioners for the purpose above-mentioned (*s*). There are sittings of the Supreme Court at Levuka (*t*). The Attorney-General of Fiji has power to submit the decision of any native stipendiary magistrates (see *infra*) in certain cases for revision by the Supreme Court. Appeal lies to the Supreme Court from the High Commissioner's Courts under the Pacific Ocean Order in Council, 1893 (*u*), and from the Supreme Court in the exercise alike of its municipal jurisdiction (*x*), and of jurisdiction under the Pacific Ocean Order in Council (*y*) to the Privy Council where the sum in dispute amounts to £500 (*z*). The Chief Justice is *ex officio* a Judicial Commissioner under the same Order in Council (*a*).

(II.) There are *Summary Jurisdiction Courts* under *European* (*b*) stipendiary magistrates with limited civil (*c*) and criminal (*d*)

- |   |  |
|---|--|
| ( <i>k</i> ) Ordinance No. 14 of 1875, s. 23.                                       | "Western Pacific Islands," <i>infra</i> , p. 351.  |
| ( <i>l</i> ) <i>Ibid.</i> , s. 24.  | ( <i>x</i> ) Order in Council, February 22nd, 1878; Stat. R. & O. Rev., 1904, vol. vi., "Judicial Committee," p. 24. |
| ( <i>m</i> ) <i>Ibid.</i> , s. 25.  | ( <i>y</i> ) Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 511.                                      |
| ( <i>n</i> ) Ordinance No. 12 of 1891.  | ( <i>z</i> ) Order in Council, February 22nd, 1878; Stat. R. & O. Rev., 1904, vol. vi., "Judicial Committee," p. 24. |
| ( <i>o</i> ) Ordinance No. 14 of 1875, s. 35.                                       | ( <i>a</i> ) See <i>infra</i> , p. 351.  |
| ( <i>p</i> ) "Jour. Comp. Leg.," vol. i. at p. 362.                                 | ( <i>b</i> ) Ordinance No. 11 of 1883, s. 1.   |
| ( <i>q</i> ) Ordinance No. 14 of 1883.  | ( <i>c</i> ) Ordinance No. 22 of 1875.   |
| ( <i>r</i> ) <i>Ibid.</i> , s. 2.   | ( <i>d</i> ) See, e.g., Ordinances No. 5 of  |
| ( <i>s</i> ) Ordinance No. 15 of 1883, ss. 4, 5.                                    |  |
| ( <i>t</i> ) See Ordinance No. 7 of 1887.   |  |
| ( <i>u</i> ) Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 484; and |  |

jurisdiction; and the Commissioners of the Supreme Court just mentioned.

(III.) There are also *Native Courts* (e), consisting of—(a) *District Courts* presided over by native stipendiary magistrates having jurisdiction over limited areas, and held at intervals of not less than two months in places appointed by the Governor; and (b) *Provincial Courts*, also of limited jurisdiction, presided over by a European stipendiary magistrate and one or more native stipendiary magistrates, and held in each province every three months. An appeal lies from the District Court to the Provincial Court, whose decision is final; but the Attorney-General may refer the decision of a native stipendiary magistrate to the Supreme Court for revision (f). Pacific Islanders resident in a native community are deemed domiciled there, and subject to native laws and regulations, and all Pacific Islanders are liable to native laws for offences against women (g).

**NEW ZEALAND : Political History.**—The three islands which form the Colony were partly explored by Tasman under the direction of the Dutch East India Company in 1642, and were visited on several occasions in the following century, notably in 1777 by Captain Cook. The first settlement by Europeans was made in 1814, and regular colonisation was begun in 1839. In 1841 the islands were erected by Letters Patent into a colony separate from New South Wales. The native chiefs ceded the sovereignty to Great Britain, receiving a guarantee of continued possession of their lands and forests, subject to the right of the Crown to pre-emption in the event of their wishing to alienate them; but this right was abolished in 1862. The purchase of native lands by the Crown was, however, continued alongside of the right of private individuals to purchase them till 1884, when the latter right was withdrawn. Responsible government was granted by the Imperial Parliament in 1852 (h). The Kermadec Islands were annexed to the Colony, January 18th, 1887, and the Cook Islands, June 11th, 1901 (i).

1876; No. 12 of 1876; No. 16 of 1876, and No. 17 of 1903—regulating appeals to Supreme Court.

(e) See Ordinance No. 35 of 1876.

(f) See "Jour. Comp. Leg.," vol. i., p. 362.

(g) Ordinance No. 5 of 1895.

(h) 15 & 16 Vict. c. 72.

(i) Order in Council, May 13th, 1901: Stat. R. & O. Rev., 1904, vol. ix., "New Zealand," p. 6. The New Zealand Acts are the Cook and Other Islands Government Act, 1901, and amending Acts: 1901, No. 44; 1902,

**Law in Force.**—The Acts of the Imperial Parliament passed before January 14th, 1840, were declared applicable to the colony by local Act (*j*). Certain other Acts passed since that date have also been adopted in the Colony (*k*).

**Courts.**—(I.) The *Supreme Court* (*l*), consisting of a Chief Justice and of such other Puisne Judges as may be appointed (*m*) (now five), is a Court of Record, and has the common law and equity jurisdiction of the English Courts of common law, equity, bankruptcy, probate, &c. (*n*), and the jurisdiction of the Lord Chancellor in England in infancy and lunacy (*o*). The practice and procedure are similar to those of English Courts (*p*). Any two or more Judges of the Supreme Court have power to act as a Court of Appeal (*q*), which hears appeals from decisions of the Supreme Court (*r*), and by leave of the Supreme Court from judgments of that tribunal on appeals from inferior Courts (*s*). The Supreme Court may try cases at Bar (*t*), and appeals from convictions by the Supreme Court (*u*), or cases reserved by the Judges of the Supreme Court (*r*). An appeal lies to the Privy Council from judgments for sums amounting to £500 (*w*). Provision is made for the holding of Circuit Courts before Judges of the Supreme Court (*x*). The Supreme Court has jurisdiction in divorce (*y*).

(II.) *District Courts* held before District Court Judges (there are at present three such Judges) have civil jurisdiction where the claim does not exceed £500 (*z*)—not, however, in cases where the title to

No. 34; 1903, No. 89; 1904, No. 22. A detailed description of the boundaries of New Zealand, and an enumeration of the islands included in those boundaries, is given in Curnin's Index (14th ed., 1905), p. 1.

(*j*) 21 & 22 Vict. No. 2.

(*k*) See Acts No. 8 of 1845, No. 1 of 1854, and No. 19 of 1860.

(*l*) No. 29 of 1882.

(*m*) *Ibid.*, s. 4.

(*n*) *Ibid.*, s. 16; and cp. No. 17 of 1860, ss. 4, 5 (repealed).

(*o*) No. 29 of 1882, s. 17.

(*p*) See Second Sched. to No. 29 of 1882.

(*q*) No. 30 of 1882, s. 5.

(*r*) *Ibid.*, s. 15.

(*s*) *Ibid.*, ss. 16, 17.

(*t*) *Ibid.*, s. 18.

(*u*) *Ibid.*, s. 19.

(*v*) See *ibid.*, ss. 20—23.

(*w*) Order in Council, May 16th, 1871; Stat. R. & O. Rev., 1904, vol. vi., "Judicial Committee," p. 68.

(*x*) No. 29 of 1882, s. 19; and cp. No. 17 of 1860, ss. 17, 18 (repealed).

(*y*) See No. 94 of 1867, and No. 42 of 1898. For details of legislation, see Curnin's Index (14th ed., 1905), headings "Court of Appeal," "Courts of Justice," "Supreme Court," "Criminal Code," "Bankruptcy," "Probate," "Administration," &c.

(*z*) No. 28 of 1893, s. 3.

real estate, &c., comes in question (a); a party aggrieved may appeal to the Supreme Court (b). These Courts have criminal jurisdiction, concurrent with the Supreme Court, to hear appeals against summary convictions (c), with cognisance also, where their criminal jurisdiction is extended by the Governor by proclamation, over all offences except treason, murder and capital felony, and felony (d), other than receiving of stolen goods (e), not punishable by more than seven years' penal servitude (f).

(III.) *Magistrates' Courts* (g), held before Resident Magistrates, District Court Judges, and two or more Justices of the Peace, if not in excess of their jurisdiction (h), have ordinary jurisdiction, subject to exceptions as to false imprisonment, illegal arrest, seduction, &c., up to £100 (i); extended jurisdiction up to £200 (k); special jurisdiction in—(a) partnership accounts, limit £200; (b) actions for illegal arrest, &c., limit £200; (c) bequests, limit £200; (d) injunctions to prevent injury to property, limit £500 value, £210 rental of land (l). The general limit of justices' jurisdiction is £20 (m). An appeal lies to the Supreme Court—(i.) on matters of fact where the claim exceeds £50; (ii.) on matters of law where the claim exceeds £20, and, by leave, where it is under that amount (n).

(IV.) The *Native Land Court* (o), consisting of the Chief Judge and such Judges and assessors as the Governor from time to time determines, has jurisdiction (in regard to "natives," i.e., aboriginals and half-castes and their descendants, s. 2) (p) in the following matters: (i.) title to native lands; (ii.) relative interests and partition; (iii.) exchange; (iv.) succession; (v.) probate and administration; (vi.) restrictions on alienation; (vii.) claims under alienation; (viii.) confirmations of alienation; (ix.) questions as to restraint of injuries to property; (x.) questions as to native trusts; (xi.) apportionment; (xii.) costs; (xiii.) trustees' accounts;

(a) No. 28 of 1893, s. 3, and No. 33 of 1880 (probates).

(b) No. 30 of 1858, ss. 102 *et seq.* and No. 22 of 1888, s. 16.

(c) *Ibid.*, s. 30; Curnin's Index, District Courts, Justices of the Peace, No. 18 of 1882, Pt. iii., and No. 44 of 1885.

(d) No. 12 of 1870, s. 4.

(e) No. 28 of 1893, s. 6.

(f) No. 12 of 1870, s. 4; and see

(III.), *infra*.

(g) No. 55 of 1893.

(h) *Ibid.*, ss. 11, 15.

(i) *Ibid.*, ss. 28, 29.

(k) *Ibid.*, s. 30.

(l) *Ibid.*, s. 31.

(m) *Ibid.*, s. 32.

(n) *Ibid.*, s. 159; and see ss. 160—167.

(o) No. 43 of 1894.

(p) *Ibid.*, ss. 5, 6.

(xiv.) vesting of land (*q*). The Governor in Council may extend their jurisdiction (*r*). An appeal lies to a Native Appellate Court, consisting of the Chief Judge and such other Judges of the Native Land Court as the Governor appoints (*s*). The Supreme Court may refer questions of native custom or fact to the Native Land Court (*t*).

There is also a Court of Arbitration for the settlement of industrial disputes, first created under the Industrial Consolidation and Arbitration Act, 1894 (*u*).

(*q*) No. 43 of 1894, s. 14.

(*r*) *Ibid.*, s. 15.

(*s*) *Ibid.*, ss. 79—95.

(*t*) *Ibid.*, ss. 96—100; and see No. 54 of 1895. "Native" or "Maori" land has been the subject of one or more Acts of Parliament in every session from 1896 to 1904, both inclu-

sive.

(*u*) 1894, No. 14, ss. 47—52. This and amending Acts have been consolidated and amended by 1900, No. 51, and the latter amended by the following: 1901, No. 37; 1903, No. 62; 1904 No. 53.

## CHAPTER IX.

### SOUTH AFRICA.

**CAPE OF GOOD HOPE: Political History.**—Cape Colony first passed into the hands of a British force in 1795. In 1797 an Act of Parliament (*a*) was passed to regulate the trade with the new possession. By the Treaty of Amiens, however, "the port of the Cape of Good Hope remains to the Batavian republic in full sovereignty, in the same manner as it did previously to the war" (*b*). It was again occupied by the British in 1806, and finally ceded to Great Britain by the General Treaty of 1814 (*c*). The Government of the Colony was conducted by a Governor aided by a few executive officers until 1835, when a Legislative Council was appointed by the Crown.

Cape Colony differs from most other colonies (*d*) in that the elective Legislature was authorised by letters patent in 1850 (*e*) instead of by Imperial Statute. Responsible Government was introduced in 1872 (*f*). By Acts of the Cape Parliament and proclamations numerous additions have been made to the territory of the Colony.

The South Africa Act, 1877, embodied an attempt towards federation (*g*). In 1905 a conference of the Attorneys-General of South Africa reported on a scheme for establishing a Court of Appeal for the whole of British South Africa (*h*).

**Law in Force.**—The law in force is Roman-Dutch law, as it was at the Cape at the time of the second occupation of the Colony by the British forces, subject to its development during the 19th century and to statutory changes made since then, or modifications introduced by local customs (*i*). Thus, for example, the

- |   |  |
|---|--|
| ( <i>a</i> ) 37 Geo. III. c. 63.  | vol. i., p. 491, 494, 496.   |
| ( <i>b</i> ) Art. 6, "Annual Register," 1802, p. 609.   | ( <i>f</i> ) <i>Ibid.</i> , ii., p. 1191.  |
| ( <i>c</i> ) Hertael's "Treaties," vol. i., p. 367.   | ( <i>g</i> ) 40 & 41 Vict. c. 47.  |
| ( <i>d</i> ) Anson, "Law and Custom of the Constitution," Pt. ii., p. 272.  | ( <i>h</i> ) "South African Law Journal," vol. xxii., p. 24.   |
| ( <i>e</i> ) The letters patent were followed by local ordinance dated 3rd April, 1852, which was confirmed by an Order in Council dated 11th March, 1853; Cape of Good Hope Statutes, 1652—1904, | ( <i>i</i> ) See <i>Seaville v. Colley</i> (1891), 9 Juta, 39; <i>Scott v. H. M. Att.-Gen.</i> (1886), 11 P. D. at pp. 130, 131; <i>Denyassen v. Mostert</i> (1872), L. R. 4 P. C. at p. 253, and Part I. of this volume, pp. 112 <i>et seq.</i> |

practice of the Courts in regard to procedure and evidence has been modified in certain respects on English lines (*k*), and the maritime and shipping law of England was adopted in 1879 so far as it was not repugnant to or inconsistent with any ordinance or Act of Parliament in force in the Colony (*l*).

**Courts of Justice.**—Civil jurisdiction is exercised by the following tribunals :—1. The *Supreme Court* consists of a Chief Justice and eight Puisne Judges (*m*). The Chief Justice and at least two Puisne Judges are specially assigned by the Governor in Council to the Supreme Court sitting at Cape Town (*n*). The *Supreme Court*, as constituted of Judges assigned to that Court sitting in Cape Town (*o*), is also the *Supreme Court of Appeal* for the Colony, and hears appeals from the Court of Eastern Districts, the High Court of Griqualand, and Circuit Courts (*p*), and also under the Africa Order in Council 1889 (*q*), and the Southern Rhodesia Order in Council, 1898, under which last the appealable amount is over £100 unless upon a case stated (*r*). Three Judges form a quorum on appeals from the Court of Eastern Districts, High Court of Griqualand, or a Circuit Court (*s*). An appeal lies from its decision to the Privy Council (*t*) under the conditions prescribed by the Charter of Justice of May 4th, 1882 (*u*). The Supreme Court has original jurisdiction over the whole Colony and its dependencies (*x*). An appeal lies to the Supreme Court from the Court of the Chief Magistrate in native territories in cases in which one party is a European (*y*), and from the Court of the Resident Magistrate in similar cases either to the Supreme Court or to the Court of Eastern Districts or the Circuit Court (*z*). 2. The *Court of Eastern Districts*, consisting of three Judges of the Supreme Court assigned to it by the Governor, of whom one is called Judge President (*a*), has jurisdiction, concurrent with that of the Supreme Court over twenty-two Districts of Cape Colony scheduled in Act 21 of

(*k*) Nathan, "Common Law of South Africa," vol. i., p. 20.

(*l*) No. 8 of 1879, ss. 1, 2.

(*m*) No. 35 of 1896, s. 3.

(*n*) *Ibid.*, s. 4; Act 35 of 1904, s. 2.

(*o*) *Ibid.*, s. 19.

(*p*) *Ibid.*, s. 20.

(*q*) No. 22 of 1898, ss. 2—6.

(*r*) *Ibid.*, ss. 7—10.

(*s*) No. 35 of 1896, ss. 20, 21.

(*t*) *Ibid.*, s. 22.

(*u*) Arts. 50, 51, viz., from final judgments for sum above, or on claim to property or civil right amounting to or of value of, £500; Stat. B. & O. Rev., 1904, vol. vi., "Judicial Committee," p. 22.

(*x*) *Ibid.*, art. 30.

(*y*) No. 32 of 1898.

(*z*) Act 26 of 1894, s. 2.

(*a*) Act 35 of 1896, s. 10.

1864, the districts of British Kaffraria incorporated in the Eastern Districts, Fingoland, Idutywar Reserve, No Man's Land, Xesibe country (*b*), Transkei, Griqualand East, Pondoland, and Tembuland territories (*c*). Causes may be referred to it or to the High Court (*see infra*) from the Circuit Court by consent of parties or on reference by the Judge (*d*). 3. The *High Court*, consisting of one Judge of the Supreme Court assigned to it by the Governor (*e*), has jurisdiction concurrent with that of the Supreme Court over Griqualand West and British Bechuanaland (*f*). 4. By the Better Administration of Justice Act, 1904, a single Judge of the Supreme Court, the Court of the Eastern Districts, and the High Court, shall constitute a quorum for the exercise of any original jurisdiction, and shall be deemed a *Divisional Court*, provided that (1) no more than three such Divisional Courts may sit at the same time (*g*); (2) that an appeal shall lie from the Divisional Court to the Supreme Court sitting as a Court of Appeal; and (3) that additional Judges may be assigned by the Governor temporarily for the purpose of forming part of the Appeal Court (*h*). 5. Judges (*i*.) of the Supreme Court hold *Sessions* at Cape Town; (*ii*.) of Eastern District Courts *Sessions* in Grahamstown; (*iii*.) of the High Court, *Sessions* at Kimberley; and any Judge of the Supreme Court can hold *Circuit Courts* in any district of the Colony (*i*). 6. *Resident Magistrates* have jurisdiction in "liquid" claims up to £250; in "illiquid" claims for price of merchandise, goods or other movable property, up to £100 (*k*); in all claims for debt or damages up to £20 (*l*).

**Criminal Jurisdiction.**—1. The *Supreme Court* is the Supreme Court of Appeal on questions of law arising in criminal cases (*m*) in the Court of Eastern Districts, High Court, Circuit Courts (*n*), or the High Court of Southern Rhodesia (*o*), which Courts have power to reserve cases for the consideration of the Supreme Court (*p*). The Supreme Court may entertain appeals from Resident Magistrates (*q*), and from Special Justices of the Peace,

(*b*) Act 21 of 1864, s. 7; Act 3 of 1865, ss. 6—16; Act 6 of 1872; Act 38 of 1877; Act 37 of 1886.

(*c*) Act 35 of 1896, s. 13.

(*d*) *Ibid.*, s. 28.

(*e*) Act 29 of 1906, s. 5.

(*f*) Act 26 of 1894, s. 18.

(*g*) Act 35 of 1904, s. 2; Act 29 of 1906, s. 1.

(*h*) No. 35 of 1904, s. 2.

B.C.L.

(*i*) See C. O. List, 1907, p. 151.

(*k*) Act 20 of 1856, s. 8, sub-s. (2).

(*l*) No. 43 of 1885, s. 5; and see No. 20 of 1856, s. 8.

(*m*) No. 35 of 1896, s. 29.

(*n*) *Ibid.*, ss. 29—32.

(*o*) No. 22 of 1898, s. 11.

(*p*) No. 35 of 1896, s. 34; No. 22 of 1898, s. 12.

(*q*) No. 35 of 1896, s. 38.



who are appointed to exercise jurisdiction in places distant from the seat of magistracy (*r*). 2. The Judges of the *Eastern Districts* and *Circuit Courts* and of the *High Courts* of Griqualand and *Southern Rhodesia* have criminal jurisdiction over all offences (*s*). 3. *Resident Magistrates* have jurisdiction over all crimes not punishable by death, transportation, or banishment (*t*), and to take preparatory examinations (*u*). The Native Territories are governed by a Native Territories Penal Code (*x*).

**British Bechuanaland** was annexed to Cape Colony by Cape Act No. 41 of 1895. The laws in force at the date of annexation (November 16th, 1895), *i.e.*, Cape, and therefore Roman-Dutch law (*y*), and not repugnant, &c., to the provisions of the Act, remain in force (*z*), and, in particular, the native jurisdiction created by ss. 31 and 32 of Schedule to Proc. 2 B. B. of 1885, is preserved (*a*). The Court of the Chief Magistrate was abolished and the High Court of Griqualand has concurrent jurisdiction with the Supreme Court (*b*). The Resident Magistrates' districts and jurisdiction have been incorporated into the legal system of the Cape of Good Hope, with an appeal either to the High Court of Griqualand, or to the Supreme Court, or to the Circuit Court having jurisdiction (*c*). An appeal lies to the Privy Council on the same conditions as from the Cape of Good Hope. In *Reg. v. Jameson* (*d*), it was held that the Foreign Enlistment Act applies to Mafeking in British Bechuanaland and to Pitsani Pitlogo, which is in the Baralong country.

**Basutoland.**—Formerly part of Cape Colony, this is now a separate territory under the legislative authority of the High Commissioner for South Africa. A Resident Commissioner exercises judicial power and Cape law is applied so far as possible (*e*).

**NATAL: Political History.**—Cape Colonists discontented with the Cape Government left that Colony in 1830 and following years. They "trekked" northward and settled in Natal, besides in other territories, after some sanguinary encounters with the natives. A

(*r*) No. 35 of 1896; and see No. 10 of 1876 and No. 40 of 1882, s. 22.

(*s*) Acts 21 of 1864, 3 of 1865, 40 of 1882, 3 of 1885; Charter of Justice, ss. 37, 38, *et seq.*; Ordinance No. 40; No. 40 of 1828, s. 2; No. 35 of 1896, ss. 15—18; South Rhod. O. in C. 1898, part iv.

(*t*) No. 20 of 1856, s. 42; and see No. 43 of 1885.

(*u*) See No. 40 of 1828, s. 27, *et seq.*

(*x*) No. 24 of 1886, amended by No. 35 of 1904, s. 9.

(*y*) See 1885, No. 2 B. B.

(*z*) No. 41 of 1895, s. 16.

(*a*) *Ibid.*, s. 16 (*c*).

(*b*) *Ibid.*, s. 8.

(*c*) *Ibid.*, s. 11.

(*d*) [1896] 2 Q. B. 425.

(*e*) See p. 366, *infra*.

force sent from the Cape in 1842 forced them to submit again to British rule, and in the following year it was proclaimed to be a British Colony upon the conclusion of a formal treaty with the Zulu king (*f*). For twelve months Natal formed part of Cape Colony, but in April, 1845, further letters patent were passed to make a separate Government. The legislative council of the Cape still continued to frame laws for Natal until 1847, when a separate legislative council was established. It was not, however, until the issue of a charter dated July 15th, 1856, that the Colony became quite distinct and separate (*g*). The charter was revoked by letters patent of July 20th, 1898 (*h*), in which year responsible government was established in the Colony (*i*).

**Law in Force.**—Roman-Dutch law, as accepted and administered by the legal tribunals of Cape Colony up to August 27th, 1845, with certain modifications by Colonial Ordinances, is the law of the Colony; but this provision does not establish within Natal any law made in Cape Colony except when the Legislature of the Cape of Good Hope had power to legislate for the district of Natal (*k*); and disputes between natives, living under native laws (other than cases arising out of trade transactions, which are dealt with according to the principles of the colonial law), are tried according to native laws and customs, if not repugnant to natural equity, &c. (*l*).

**Courts.**—(1.) The *Supreme Court* (*m*), consisting of a Chief Justice, who is also Judge of the Vice-Admiralty Court, and three Puisne Judges (*n*), held in Pietermaritzburg (*o*), is a Court of Record and has jurisdiction over all causes, whether affecting Europeans or natives, arising, and all persons being within the Colony (*p*).

Issues of fact are tried by a single Judge with a common jury (of seven, of whom not less than five determine the verdict), or a special jury (of five, of whom not less than four determine the verdict (*q*)), on the application of either party, except where—(a) the plaintiff claims provisional judgment in virtue of a written acknowledgment of debt by the defendant; (b) matter of record

- |   |   |
|---|---|
| ( <i>f</i> ) Hertslet's "Treaties," vol. xv., p. 848.           | by No. 39 of 1896.  |
| ( <i>g</i> ) Colonial Office List, 1906, p. 266.                | ( <i>l</i> ) No. 39 of 1896, s. 21; and see No. 49 of 1898. |
| ( <i>h</i> ) Statutes of Natal, 1845—1899, "Parliament," p. 33. | ( <i>m</i> ) No. 39 of 1896.                                |
| ( <i>i</i> ) <i>Ibid.</i> , p. 25.                              | ( <i>n</i> ) No. 38 of 1904, s. 2.                          |
| ( <i>k</i> ) No. 12 of 1845, now re-enacted                     | ( <i>o</i> ) No. 39 of 1896, s. 5.                          |
|   | ( <i>p</i> ) <i>Ibid.</i> , s. 6.                           |
|   | ( <i>q</i> ) <i>Ibid.</i> , s. 42.                          |

is pleaded by one party and denied by the other; (c) the sum in dispute does not exceed £50 (r). An appeal lies to the Supreme Court from the Circuit Court or Judge at Chambers (s) where the sum at issue, exclusive of costs, exceeds £50 (t), and from the Supreme Court to the Privy Council from final judgments for sums above £500 (u). An appeal lies to the Supreme Court from the verdict of a jury on such grounds as misdirection (x). The Supreme Court is also a Court of Review in regard to the proceedings of all inferior Courts (y). Provision is made for holding Circuit Courts before Judges of the Supreme Court (z); and for the trial of election petitions, by No. 19 of 1895, s. 7. Criminal cases are tried before a single Judge and a jury of nine—of whom not less than seven determine the verdict (a).

(II.) The *Native High Court* (b), consisting of a Judge President and two other Judges (c); is a Court of Record and sits in Full Court (d) at Pietermaritzburg not less than three months, and at Eshowe not less than once, in the year (e). Trials of civil and criminal cases take place either before the Full Court or before a Judge; there is no trial by jury in this tribunal (f). Provision is made for Circuit Courts (g), and the jurisdiction of a Judge sitting in circuit extends to the whole Colony (h). An appeal lies from the judgment of the Circuit Court to the Full Court where the claim is for not less than £50, and in matrimonial causes (i) and in criminal cases at the instance either of the Crown or of the person convicted (k); and Crown cases may be reserved (l). The Native High Court exercises jurisdiction over all natives (m), "native" includes all members of the aboriginal races or tribes of Africa south of the Equator, including Griquas and Hottentots (n), in native cases—i.e., cases in which all parties or accused persons are

(r) No. 39 of 1896, s. 41.

(s) See *ibid.*, s. 10.

(t) *Ibid.*, s. 57.

(u) Order in Council, July 19th, 1870; Stat. R. & O. Rev., 1904, vol. vi., "Judicial Committee," p. 58.

(x) See No. 39 of 1896, s. 58.

(y) *Ibid.*, s. 8.

(z) *Ibid.*, ss. 11—19.

(a) *Ibid.*, s. 40.

(b) No. 49 of 1898.

(c) *Ibid.*, s. 7.

(d) *I.e.*, all three Judges sitting. *Ibid.*, s. 17.

(e) *Ibid.*, s. 16.

(f) *Ibid.*, s. 19.

(g) *Ibid.*, s. 20.

(h) *Ibid.*, s. 22.

(i) *Ibid.*, s. 39.

(k) *Ibid.*, s. 32.

(l) *Ibid.*, s. 33.

(m) *Ibid.*, s. 25.

(n) *Ibid.*, s. 5.

natives (o). The following cases are excepted: Insolvency, questions as to ownership of immovable property, &c., franchise, divorce, &c., of Christian marriage; certain offences, *e.g.*, against the by-laws of corporations, the Post Office, mines, bigamy, private prosecutions. When the complainant is not a native (p), the jurisdiction of the Supreme Court is excluded, except where a person not a native is allowed to intervene (q). The Native High Court's jurisdiction does not exclude that of magistrates in cases of faction fighting, rioting, rape, cattle stealing, and kindred crimes (r).

(III.) There are *Magistrates' Courts* in the various divisions (s) (a) with criminal jurisdiction in all cases, except murder, rape, treason, culpable homicide, assault with intent, coining, bigamy, and abominable offences and crimes for which a special Court is created (t), and civil jurisdiction up to a £200 limit (u), except in native cases (x). The magistrates in the boroughs of Pietermaritzburg and Durban are Chief Magistrates (y), with jurisdiction in civil cases up to £300 (z) and extended criminal jurisdiction (a). In all claims above £100, the Supreme or Circuit Court has concurrent jurisdiction with the Chief Magistrates' Court (b). An appeal lies to the Supreme Court or Circuit Court in civil cases where the claim is for £5 or upwards (c); and also in criminal cases (d). The jurisdiction formerly exercised by administrators of native law is now (e) transferred to Magistrates' Courts, and (f) an appeal lies to Magistrates' Courts from every judgment of a native chief (g) and from a Magistrate's judgment on such appeal to a Native High Court Judge; in matrimonial causes, causes affecting the liberty of the person, cases in which the claim exceeds £5, exclusive of costs, or in criminal cases where the sentence exceeds £5, one month's imprisonment, or ten lashes, in other civil cases with leave of a Native High Court Judge (f).

(IV.) *Courts of Native Chiefs*.—The territorial jurisdiction of these Courts is defined by the Governor. They have original civil

- |   |                               |
|---|-------------------------------|
| (v) No. 49 of 1898, s. 5.                     | (y) No. 32 of 1905 s. 1.      |
| (p) <i>Ibid.</i>                              | (z) <i>Ibid.</i> , s. 2.      |
| (q) <i>Ibid.</i> , s. 26; and see ss. 27, 28. | (a) <i>Ibid.</i> , s. 3.      |
| (r) <i>Ibid.</i> , s. 29.                     | (b) <i>Ibid.</i> , s. 2.      |
| (s) No. 22 of 1896.                           | (c) No. 22 of 1896, s. 69.    |
| (t) <i>Ibid.</i> , s. 14.                     | (d) <i>Ibid.</i> , s. 68.     |
| (u) No. 32 of 1905, s. 2.                     | (e) No. 49 of 1898, s. 48.    |
| (x) No. 22 of 1896, s. 35; and see            | (f) <i>Ibid.</i> , s. 56.     |
| (II.), <i>supra</i> , and s. 45.              | (g) See (IV.), <i>infra</i> . |

jurisdiction in suits between natives, except in cases arising out of Christian marriages (*h*), and criminal jurisdiction over natives except in capital cases, offences against the person or property of persons not natives, culpable homicide, assault with intent to kill, pretended witchcraft, crimes created by Natal or Zululand law which were not offences by common law or native custom (*i*).

**Zululand.**—The long wars with the Zulus were terminated by the cession of their territory, which was declared to be a possession of the British Crown by Proclamation dated May 14th, 1887 (*k*), and laws and regulations for its government were issued by the Governor of Natal on the following June 21st (*l*). Various districts have from time to time been added to the original Protectorate. On June 11th, 1895, a British protectorate was declared over the territory of Amatongaland, which was annexed by letters patent, dated November 30th, 1897 (*m*). An Act providing for the annexation of Zululand to the Colony of Natal was passed by the local Legislature in the same year (*n*), and effect was given to it by the Governor's Proclamation of December 30th, 1897. The Act contained a special reservation that the Supreme Court of Natal should not exercise jurisdiction within the province (*o*). The law of Natal was applied to Zululand by an Act of 1898 (*p*). Another Act in the same year (*q*) authorised the extension of the jurisdiction of the Supreme Court of Natal (*r*) to the territory.

**TRANSVAAL: Political History.**—The Transvaal, formerly the South African Republic, was, as the result of the Boer war, formally annexed to the Empire, under the provisional administration of Lord Roberts of Kandahar, by Proclamation dated September 1st, 1900, and issued in pursuance of a Royal Commission dated July 4th, 1900, but did not form part of the British Empire until the conclusion of peace by the signature of the articles of settlement at Vereeniging on May 31st 1902.

By Letters Patent, dated September 23rd, and proclaimed on September 29th, 1902 (*s*), the offices of Governor and Commander-

(*h*) No. 49 of 1898, s. 62.

(*i*) *Ibid.*, s. 63.

(*k*) Hertslet, vol. xvii., p. 1221.

(*l*) *Ibid.*, vol. xviii., p. 778.

(*m*) *Ibid.*, vol. xxi., p. 171.

(*n*) No. 37 of 1897.

(*o*) *Ibid.*, s. 11.

(*p*) No. 17 of 1898.

(*q*) No. 46 of 1898, and see No. 49 of 1898, ss. 57 *et seq.*

(*r*) Supreme Court Act, No. 39 of 1896, and see p. 307.

(*s*) Stat. R. & O., Rev., 1904, vol. xiii., "Transvaal," p. 2.

in-Chief and of Lieutenant-Governor were constituted, and provision was made for the government of the colony in terms, *mutatis mutandis*, identical with those of the Letters Patent constituting the same offices in, and providing for the government of, the Orange River Colony (*q.v.*). Responsible government was granted by Letters Patent dated December 6th, 1906 (*t*). By supplementary instructions the Governor is not allowed to assent to certain classes of laws unless he has received instructions from the Secretary of State, or if they contain a clause suspending their operation until the pleasure of the Crown is known (*u*).

**Law in Force.**—In the time of the Republic, Art. 31 of the Thirty-three Articles of April 9th, 1844, ratified on May 23rd, 1849, provided that for all cases not specifically falling under the previous articles, “the Dutch law, *i.e.*, the Roman Dutch law, shall serve as a basis, yet upon a reasonable system and in accordance with the usage of South Africa, and for the benefit and welfare of the community.” (*x*).

The language of Art. 31 gave rise to uncertainty, and it was accordingly provided by annexure No. 1 to the Grondwet of 1858 that (Art. 1) the work of Van der Linden should be the law book of the State, so far as such did not come into conflict with the Grondwet and other Laws or Volksraad resolutions, and that (Art. 2) whenever in that work any matter was not treated with sufficient clearness or altogether omitted, the Commentaries of Simon Van Leeuwen and the Introduction of Hugo Grotius should be binding.

This system was kept in force after the annexation by Proclamation (Transvaal) No. 14 of 1902, dated April 10th, 1902, when it was provided that “The Roman-Dutch law, except in so far as it is modified by legislative enactment, shall be the law in this Colony” (*y*).

**Courts.**—*Supreme Court.*—The administration of justice is regulated as regards the Superior Courts by the Proclamation No. 14 of 1902 as amended by Ordinance No. 2 of 1902. The Supreme Court (*z*)—under the Proc. No. 14 of 1902, Art. 1, the High Court—of

(*t*) Parl. Pap., Cd. 3250; “Transvaal Gov. Gaz.,” December 14th, 1906.

(*u*) *Ibid.*, p. 36.

(*x*) Kotze, C.J., *Rooth v. State*, (1888) Kotze, Rep. 1881—1888, vol. ii., pp. 259, 261, and see “Trans. Laws,” p. 4. As to the administration of

Roman-Dutch law upon “a reasonable system and in accordance with the general custom of South Africa,” see *Rooth v. State*, *ubi cit. sup.* “Cape Law Journal,” 1888, pp. 304, 399.

(*y*) Art. 17. See p. 303, note (*r*), *supra*.

(*z*) Ordinance No. 2 of 1902, art. 1.

the Transvaal is a Court of Record (a), and consists of a Chief Justice and as many Puisne Judges, not being less than three, as the Governor may from time to time appoint (b), holding offices during good behaviour, and only removable by the Governor in Council on an address from the Legislative Council and Legislative Assembly (c). No Judge may accept any other office of profit without the consent of the Governor (d). Provision is made (e) for the admission of barristers, attorneys, notaries and conveyancers. The Supreme Court has cognisance of all pleas and jurisdiction in all civil cases arising within the Transvaal, and over all persons whomsoever residing or being therein (f). The Roman-Dutch law, except in so far as it is modified by legislative enactments, is, as above stated, the law of the Colony (g). The law relating to criminal procedure is codified by Ord. No. 1 of 1903. The Supreme Court sits at Pretoria (h). Actions for provisional sentence, all motions, applications and trial cases in which the defendant is in default may be heard by a single Judge sitting in Chambers; in all other civil cases a quorum of two Judges is required, provision being made for a rehearing before three at least in case of difference of opinion (i). But by the consent of the parties or under an order of the Court, an action may be heard by a single Judge (k). The Court may sit in more than one division at the same time (l). It exercises criminal jurisdiction over all offences triable in the colony (m), for which it is the Court of Appeal in criminal cases (n), and its Judges hold *Circuit Courts* (o).

An appeal lies—

(I.) To the Supreme Court—

- (i.) From every final judgment or order of a single Judge in Chambers (p), or in vacation (q) or of a Divisional Court (r).
- (ii.) By way of review from the proceedings of all inferior

(a) Proc. No. 14 of 1902, art. 1.  
 (b) Ordinance No. 2 of 1902, art. 1.  
 (c) Letters Patent, December 6, 1906, s. 48.  
 (d) Proc. No. 14 of 1902, art. 7.  
 (e) Arts. 10—15 of No. 14 of 1902; and see Ordinance 31 of 1904.  
 (f) *Ibid.*, art. 16.  
 (g) *Ibid.*, art. 17.  
 (h) *Ibid.*, art. 23.

(i) *Ibid.*, art. 20.  
 (k) Ordinance No. 31 of 1904, s. 1.  
 (l) Proc. No. 14 of 1902, art. 23.  
 (m) Ordinance No. 10 of 1903, s. 1.  
 (n) *Ibid.*, s. 2, and see Ordinance No. 1 of 1903, chap. xx.  
 (o) Ordinance No. 10 of 1903, s. 4.  
 (p) Proc. No. 14 of 1902, art. 22.  
 (q) Ordinance No. 31 of 1904, s. 6.  
 (r) *Ibid.*, s. 4.

Courts (*s*) on the grounds of—(a) incompetency of the Court, including excess of jurisdiction; (b) interest on the part of the Judge; (c) malice or corruption on the part of the Judge; (d) gross irregularity in the proceedings; (e) the admission of illegal and incompetent, or the rejection of legal and competent, evidence (*t*).

(iii.) By way of appeal from inferior Courts, including the Circuit Courts and the Witwatersrand High Court (*u*).

(II.) A quorum of at least three Judges is required in appeal cases (*x*) to the Supreme Court from the Witwatersrand Court or Circuit Courts (*y*) in civil proceedings. An appeal lies to the Privy Council (*z*) from its judgments in civil actions depending in it or before it on appeal in respect of sums above the amount or value of £2,000 sterling, or involving directly or indirectly the title to property, or to some civil right amounting to, or of the value of, £2,000 sterling (*a*). The right of the Crown to entertain appeals by special leave is expressly reserved (*b*).

The *Witwatersrand High Court* (*c*), formerly (*d*) styled the Witwatersrand District Court, is a Court of Record (*e*) sitting at Johannesburg (*f*), consisting of a single Judge (*g*), and exercising concurrent jurisdiction with the Supreme Court, except as regards its appellate jurisdiction and power of review. Its jurisdiction is limited as regards insolvency (*h*), and in all cases in which under the laws of the late South African Republic, a limited jurisdiction only was conferred on the Circuit Courts (*i*). It exercises criminal jurisdiction over all offences triable in the Witwatersrand district (*k*). Cases may be removed from the Supreme Court into the Witwatersrand Court and *vice versa* (*l*).

(*s*) Proc. No. 14 of 1902, art. 18.

(*t*) *Ibid.*, art. 19.

(*u*) See note (*y*); and Proc. No. 14 of 1902, arts. 18, 33.

(*x*) *Ibid.*, art. 38.

(*y*) Ordinance No. 10 of 1903, s. 9.

(*z*) Proc. No. 14 of 1902, art. 39, and Order in Council of September 15th, 1902; Stat. B. & O. Rev., 1904, vol. vi., "Judicial Committee," p. 88.

(*a*) See *East Rand Deep, Ltd. v. Louis Joel* [1903] T. S. 703.

(*b*) Order in Council, September 15th, 1902, clause 8.

(*c*) Ordinance No. 2 of 1902, art. 2.

(*d*) Proc. No. 14 of 1902, art. 24.

(*e*) *Ibid.*, art. 27.

(*f*) *Ibid.*, art. 25.

(*g*) *Ibid.*

(*h*) But see the Transvaal Insolvency Law (No. 13 of 1895, *passim*) as to the concurrent powers of the High Court and Circuit Court in insolvency proceedings.

(*i*) Proc. No. 14 of 1902, art. 27 as to appeals; see *supra*, and arts. 35 *et seq.*

(*k*) Ordinance No. 10 of 1903, s. 1.

(*l*) Proc. 14 of 1902, art. 29.



The pleadings and proceedings in the Supreme Court and Witwatersrand High Court are to be in the English language (*m*), but the use of the Dutch language may be allowed in any civil or criminal suit where it appears to the Court to be necessary for the better and more effectual administration of justice (*n*) (*o*). The law of evidence is embodied in Proc. No. 16 of 1902 (*p*).

The Witwatersrand High Court and the Circuit Courts which are held at least twice a year (*q*), have no appellate jurisdiction (*r*).

*Courts of Resident Magistrates* are established in various districts by Proc. No. 21 of 1902 (*s*)—which is amended in details by Ordinance No. 47 of 1902—and subsequent notifications by the Governor in the “Government Gazette.” In case of absence, &c., the powers of the Resident Magistrate may be exercised by an Assistant-Resident Magistrate (*t*).

The civil jurisdiction of these Courts is as follows: As regards *persons*, over persons resident within the respective districts, or, if not so resident, with reference only to landed property situated there. As regards *things*—(i.) claims on bills of exchange and other “liquid documents” up to £500, exclusive of interest; “illiquid” cases for price of merchandise, goods or other movable property up to £250 and set-off and counter-claim not exceeding the amount if over £100 claimed in the plaintiff’s summons; (ii.) other claims up to £100; (iii.) ejectment, not exceeding £100, where the right to the property claimed or its occupation is in dispute (*u*).

In criminal jurisdiction all offences not punishable by death, transportation or banishment, or more severely than by a fine of £75, imprisonment for six months, with or without hard labour, or whipping up to twenty-five lashes—this last a form of punishment only competent in case of a second or subsequent conviction for some crime or offence within the space of three years (*x*), are cognisable by Resident Magistrates. But any male child, not exceeding fourteen years of age, may be privately whipped (up to fifteen cuts) on a first

(*m*) Proc. 14 of 1902, art. 18.

(*n*) Ordinance No. 2 of 1902, s. 7.

(*o*) See art. 5 of articles of Peace, May 31st, 1902 (C. O. List, 1906, p. 345).

(*p*) See also No. 1 of 1906 (Neighbouring Colonies Evidence Act).

(*q*) No. 10 of 1903, s. 4.

(*r*) *Ibid.*, s. 11.

(*s*) There are special provisions for the Witwatersrand District, ss. 53, *et seq.*

(*t*) Proc. No. 21 of 1902, arts. 8 (extended by Ordinance No. 12 of 1904, s. 1), 9.

(*u*) *Ibid.*, art. 12, amended by Ordinance No. 12 of 1904, s. 2; and see ss. 3, 6.

(*x*) *Ibid.*, art. 35.

conviction (*y*). In any case where a person is sentenced by a Resident Magistrate to be imprisoned for more than six weeks, or to a fine exceeding £25, or to any number of lashes, the Magistrate is required to forward the record (together with such observations, if any, as he thinks necessary), to the Registrar of the Supreme Court. The papers are laid before a Judge in Chambers, who may either endorse on the record his certificate that the proceedings appear to be in accordance with real and substantial justice (*z*), or if he is not satisfied on that point, submit the record to the Supreme Court, which has full power, after argument at the Bar, if it think fit, to confirm, alter, or reverse the judgment of the Resident Magistrate (*a*). The transmission of any record to the Supreme Court is to be notified by the Magistrate to the person convicted, who may cause the case so transmitted to be set down for argument (*b*). In such proceedings no costs are recoverable by or against either side (*c*).

An appeal lies to the Supreme Court—

- (i.) From any final judgment, &c., of the Resident Magistrate's Court in civil cases (*d*).
- (ii.) By any person convicted by the judgment of any such Court (*e*).
- (iii.) By way of review at the instance of—
  - (a) The Judge to whom a record is referred, as above explained, by a Resident Magistrate (*f*) ;
  - (b) The person convicted on notification of such a reference to him by the Resident Magistrate (*g*) ;
  - (c) The Attorney-General (*h*).

A *Native Court* is established at Johannesburg for the Witwatersrand district (*i*), with jurisdiction to try—(1) all contraventions by coloured persons of any law or regulation exclusively applicable to such persons ; (2) all offences by such persons against the laws relating to masters and servants ; (3) all civil disputes between coloured persons falling within the jurisdiction of a Resident

(*y*) Proc. No. 21 of 1902, art. 36,  
Ordinance No. 47 of 1902.

(*z*) Proc. No. 21 of 1902, art. 39,  
Ordinance No. 12 of 1904, s. 4.

(*a*) Proc. No. 21 of 1902, art. 40,  
Ordinance No. 12 of 1904, s. 5.

(*b*) Proc. No. 21 of 1902, art. 41.

(*c*) *Ibid.*, art. 41.

(*d*) *Ibid.*, art. 26.

(*e*) *Ibid.*, art. 42.

(*f*) *Ibid.*, art. 40.

(*g*) *Ibid.*, art. 41.

(*h*) *Ibid.*, art. 43. Generally see  
Buckle, "Transvaal Magistrates Court  
Practice" (1905).

(*i*) *Ibid.*, art. 56. There are also  
Native Commissioners and Sub-Com-  
missioners (Ordinance No. 3 of 1902).

Magistrate's Court (*k*); (4) all contraventions of the Native Passes Proclamation, 1901 (*l*), and of the Masters and Servants' Law, where either the complainant or the accused is a coloured person (*m*). Any question as to whether a party is a "coloured person" is to be determined finally by the Magistrate—the benefit of any doubt being given to the accused (*n*).

**Swaziland.**—The rights and powers of protection, legislation, jurisdiction and administration exercised by the South African Republic passed to the Crown on the conclusion of peace, and their exercise was entrusted to the Governor of the Transvaal in 1903 (*o*). The Governor was authorised to appoint a Resident Commissioner, Judges, Magistrates, and other officers (*p*). Legislation is by proclamation (*q*), and accordingly the laws of the Transvaal have *mutatis mutandis* been applied to the territory (*r*). By Transvaal Ordinance of 1904, the Judges of the Supreme Court may act as Judges of Circuit Courts in Swaziland (*s*). An appeal from Circuit Courts and Courts of Resident Magistrates established in Swaziland lies to the Supreme Court of the Transvaal and thence to the Privy Council (*t*). By Order in Council December 1st, 1906, the High Commissioner for South Africa is substituted for the Governor of the Transvaal (*u*).

**ORANGE RIVER COLONY: Political History.**—The territory formerly known as the Orange Free State was, by Proclamation dated May 24th, 1900 (*x*), and issued in pursuance of a Royal Commission dated May 21st, 1900, formally annexed to the Empire under the provisional administration of Lord Roberts of Kandahar, but only formed part of the British Empire on the conclusion of peace by the signature of the Articles of Settlement at Vereeniging on May 31st, 1902. By Letters Patent, dated August 2nd, 1901, and proclaimed on June 28rd, 1902 (*y*), the offices of Governor and Commander-in-Chief and Lieutenant-Governor were constituted, and provision was made for the government of the

- |   |  |
|---|--|
| ( <i>k</i> ) Proc. No. 21 of 1902, art. 57.   | ( <i>r</i> ) See Transvaal Ordinance No. 13 of 1904.                           |
| ( <i>l</i> ) No. 37 of 1901.  | ( <i>s</i> ) Transvaal Ordinance No. 13 of 1904, s. 1.                         |
| ( <i>m</i> ) Proc. No. 40 of 1902.  | ( <i>t</i> ) <i>Ibid.</i> , s. 2.  |
| ( <i>n</i> ) No. 21 of 1902, art. 57.   | ( <i>u</i> ) Parl. Pap., Cd. 3250, p. 38.                                      |
| ( <i>o</i> ) Order in Council, 23th June, 1903, Stat. R. & O., Rev., 1904, vol. v., "Foreign Jurisdiction," p. 141. | ( <i>x</i> ) Stat. R. & O., Rev., 1904, vol. ix., "Orange River Colony," p. 1. |
| ( <i>p</i> ) <i>Ibid.</i> , s. 4.   | ( <i>y</i> ) <i>Ibid.</i> , p. 2.  |
| ( <i>q</i> ) <i>Ibid.</i> , s. 5.   |  |

Colony. By these Letters Patent it was provided that there should be an Executive Council consisting of such persons as should be directed by Royal Instructions (z), and a Legislative Council consisting of the Lieutenant-Governor and such persons, not being less than two at any time, as might be directed by Royal Instructions (a). The Legislative Council is empowered "to establish such Ordinances and to constitute such Courts and officers and to make such provisions and regulations for the proceedings in such Courts and for the administration of justice, as may be necessary for the peace, order, and good government of the Colony" (b), subject to a power of disallowance and a reserved power of legislation (c) by the Crown. In making Ordinances, the Lieutenant-Governor and Executive Council are to observe any Royal Instructions (d). The Lieutenant-Governor is empowered—(a) to appoint Judges and other officers with consent of the Governor, and all such appointments, unless otherwise provided by law, are to be "during pleasure" (e); (b) to suspend any such officer, with the like consent, pending the Royal pleasure; (c) to grant pardons or remission of fines, provided that in no case, except in that of a political offence, is banishment to be made a condition of any such pardon or remission (f).

**Law in Force.**—As in South Africa generally, the Roman-Dutch law is the basis of the law of the Colony. Art. 57 of the Constitution of the Orange Free State of the 23rd of February, 1854 (g) provides that the Roman-Dutch law was to be the common law (*hoofdwet*) of the State where no other law was passed by the *Volksraad*. By a later provision (h) the term "Roman-Dutch law" was interpreted to mean the Roman-Dutch law "in so far as it was found in force in Cape Colony at the time of the appointment of English Judges in the place of the previously existing Council of Justice, and not to include any new laws and institutions, local or general, which might have been introduced into Holland, and which are not based on, or are in conflict with, the old Roman-Dutch law, as expounded

(z) Letters Patent, 1901, art. 6.

(a) *Ibid.*, art. 7.

(b) *Ibid.*, art. 8.

(c) *Ibid.*, art. 9.

(d) *Ibid.*, art. 11.

(e) *Ibid.*, art. 13.

(f) *Ibid.*, art. 15.

(g) Constitution Orange Free State, 1857, translated as Stat. L. O. R. C., 1901, p. 8.

(h) Chap. i., 1 of the Law Book of the Orange Free State, translated; *ibid.*, p. 8.

in the text-books of Voet, Van Leeuwen, Grotius, De Papegaay, Merula, Lybrecht, Van der Linden, Van der Keessel, and the authorities cited by them." This system was kept in force by Ordinance (Orange River Colony) No. 8 of 1902, which provided that the common law in the Colony should remain the Roman-Dutch law, in so far as it had been introduced into and was applicable to South Africa; and that the statute law of the Orange Free State should continue in full force, unless amended or repealed by that and subsequent Ordinances (i).

**Courts.**—(I.) A *High Court of Justice* is established at Bloemfontein (k), consisting of a Chief Justice and not less than two Puisne Judges (l), being barristers or advocates admitted or entitled to practice in the said High Court, or Judges of the Supreme Court of any British colony (m). The High Court is a Court of Record (n). It has jurisdiction in all civil and criminal matters arising in the Colony, and over all persons residing and being therein (o). Two Judges constitute a quorum (p). The Judges hold office during good behaviour. In case of misconduct, the Lieutenant-Governor may suspend a Judge, forwarding thereupon to the Governor, for submission to the Secretary of State, a report stating the grounds and causes of such suspension, and His Majesty may confirm or disallow such suspension (q). A Judge is to hold no other office, place of profit or emolument in the Colony without the consent of the Lieutenant-Governor (r).

In case of a difference of opinion between the two Judges of the High Court, either upon the hearing of the whole cause, or upon an exception therein, provision is made for a suspension of the cause until three Judges are present (s).

Criminal cases are tried before any one of the Judges of the High Court and a jury of nine, whose verdict must be unanimous (t). The High Court is a Court of Appeal in criminal cases from the Superior Courts of the Colony (u)—

(i) In certain commercial law suits the law administered by the Supreme Court of the Cape Colony is to be followed (Ordinance No. 5 of 1902). See also No. 28 of 1902 (Bills of Exchange).

(k) No. 4 of 1902, s. 1.

(l) No. 13 of 1904, s. 3.

(m) No. 4 of 1902, s. 1.

(n) *Ibid.*, s. 2.

(o) No. 4 of 1902, s. 3.

(p) No. 13 of 1904, s. 4.

(q) No. 4 of 1902, s. 6.

(r) *Ibid.*, s. 7.

(s) No. 13 of 1904, s. 6.

(t) No. 4 of 1902, s. 18.

(u) No. 13 of 1904, s. 11.

- (i.) By way of case reserved on the review of any judgment of any inferior Court (*x*) or in any criminal proceeding before the High Court or a Circuit Court (*y*).
- (ii.) At the instance of the defendant in any criminal case under review (*z*) or in the prosecution of any indictment in the High Court or a Circuit Court (*a*).

The execution of a criminal sentence is not suspended by an appeal unless—(a) it is one of death, flogging or whipping; or (b) the Court from which the appeal is made, or by which it is reserved, orders the defendant to be admitted to bail, or to be treated as an unconvicted prisoner till the appeal is decided (*b*).

An appeal lies to the Privy Council against any decision of the High Court in any civil suit involving a sum of more than £500. Leave to appeal is to be applied for within thirty days and security given within two months (*c*).

(II.) *Circuit Courts* are held by the Judges of the High Court at least twice a year in districts fixed by the Lieutenant-Governor by proclamation (*d*). Each Circuit Court is a Court of Record (*e*). An appeal lies in all civil causes to the High Court (*f*). Proceedings in the High Court and Circuit Courts are to take place in the English language; but the use of the Dutch language may be allowed, at the hearing of any suit, civil or criminal, whenever it appears to the Court “to be necessary for the better and more effectual administration of justice” (*g*).

Causes may be removed for trial from the High Court into a Circuit Court, and *vice versa* (*h*).

The proceedings of inferior Courts may be reviewed on the grounds of—(i.) incompetency of the Court, including excess of jurisdiction, or (ii.) interest on the part of the Judge; (iii.) malice or corruption on the part of the Judge; (iv.) gross irregularity in the proceedings; (v.) the admission of illegal or incompetent, or the rejection of legal and competent, evidence (*i*).

(*x*) No. 4 of 1902, s. 33.

(*y*) *Ibid.*, s. 37.

(*z*) *Ibid.*, s. 34.

(*a*) *Ibid.*, s. 35.

(*b*) *Ibid.*, s. 38.

(*c*) No. 13 of 1904, s. 16, and Stat. R. & O., 1904, p. 695

(*d*) No. 4 of 1902, s. 20.

(*e*) *Ibid.*, s. 21.

(*f*) No. 13 of 1904, s. 10.

(*g*) No. 4 of 1902, s. 22.

(*h*) *Ibid.*, s. 23.

(*i*) *Ibid.*, ss. 25, 26, and see Nos. 7 of 1902, and 38 of 1903.

There are Courts of *Resident Magistrates* (*k*) with civil jurisdiction over cases on "liquid documents" up to £100, in "illiquid" cases up to £50, in debt or damages up to £20, ejectment where the rent or rental value does not exceed £10 a month (*l*), and with power to grant arrests and interdicts, etc. (*m*), subject to certain limitations (*n*), and with criminal jurisdiction over all crimes not punishable exclusively by death, transportation or banishment, and punishment not to be more severe than fine of £10 or imprisonment not exceeding three months, lashes in case of subsequent conviction of some crime or offence in two years (*o*), punishment of male children up to fourteen years (*p*). Appeals lie from magistrates to the High Court or a Circuit Court (*q*).

There are also special *Justices of the Peace* (*r*) who have criminal jurisdiction over assault, theft up to £5 (not being cattle, etc.), attempts to commit such offences or being accessory to them, or receiving stolen goods up to £5 value (*s*), with power to give corporal punishment to juvenile male offenders (*t*), and power of inquiry into offences (*u*). Provision is made for juries (*x*) and there are laws of evidence (*y*) and criminal procedure (*z*).

(*k*) No. 7 of 1902.

(*l*) *Ibid.*, s. 23, and No. 38 of 1903.

(*m*) No. 1 of 1906; and see No. 2 of 1906 (petty debts recovery).

(*n*) No. 7 of 1902, s. 26.

(*o*) *Ibid.*, s. 60.

(*p*) *Ibid.*, s. 65; and No. 31 of 1905 (identification of prisoners).

(*q*) *Ibid.*, s. 96 and No. 38 of 1903.

(*r*) Nos. 6 of 1902, and 3 of 1905.

(*s*) Nos. 6 of 1902, s. 19 and 3 of 1905, s. 1.

(*t*) *Ibid.*, s. 4.

(*u*) Nos. 6 of 1902, and 41 of 1903, and under Pass Law No. 9 of 1906.

(*x*) No. 17 of 1902.

(*y*) No. 11 of 1902; and see No. 4 of 1906.

(*z*) No. 12 of 1902 and No. 6 of 1905.

## CHAPTER X.

### EXTERRITORIAL JURISDICTION.

**Exterritorial Jurisdiction.**—Exterritorial jurisdiction is exercised by the Crown by virtue of “treaty, capitulation, grant, usage, sufferance and other lawful means” within divers foreign countries (*a*). This jurisdiction is now very generally regulated by Orders in Council under the Foreign Jurisdiction Act, 1890 (*b*), which repealed and consolidated earlier enactments on the same subject (*c*).

**India Outside British India.**—The exercise of exterritorial jurisdiction by British Courts of Justice in certain tracts and places in the territories of Native States in India outside British India over the subjects of those States, and in the Native States generally over British subjects, and other persons who may be subject to such jurisdiction, has already been dealt with in Chapter III. of this Part, under the sub-title “EXTERRITORIAL JURISDICTION” (*d*).

**China and Corea.**—Exterritorial jurisdiction in China and Corea is now governed by the China and Corea Order in Council, 1904 (*e*). The limits of the Order are the dominion (including territorial waters), of the Emperor of China and of the Emperor of Corea, but not, except as otherwise provided, placed within the limits of the Wei-hai-Wei (*q.v.*) Order in Council, 1901 (*f*). All consular jurisdiction in Japan ceased on August 4th, 1899, in virtue of Art. 20 of the Treaty of July 16th, 1894 (*g*), and an Order in Council of October 7th, 1899 (*h*). The jurisdiction applies to—(i.) British subjects; (ii.) the administration or control of the property, and all personal and proprietary rights

(*a*) As to the history of exterritorial jurisdiction, see Hall, “Foreign Jurisdiction”; Jenkyns, “British Rule and Jurisdiction beyond Seas,” p. 148; Piggott, “Exterritoriality.”

(*b*) 53 & 54 Vict. c. 37.

(*c*) 6 & 7 Vict. c. 94; 29 & 30 Vict. c. 87; 38 & 39 Vict. c. 85; 41 & 42 Vict. c. 67.

(*d*) See *supra*, pp. 157—161; see also the remarks under the sub-title “INDIA OUTSIDE BRITISH INDIA,” in

the Tabular Statement showing conditions of appeal to the Privy Council.

(*e*) October 24th, 1904; Stat. R. & O., 1904, p. 193, amended by Order in Council, Feb. 11, 1907, *London Gazette*, p. 1189.

(*f*) Stat. R. & O. Rev., 1904, vol. v., “Foreign Jurisdiction,” p. 283.

(*g*) See Hertslet, *xix.*, p. 698.

(*h*) Stat. R. & O. Rev., 1904, vol. v., “Foreign Jurisdiction,” p. 275.



of British subjects within the prescribed limits; (iii.) foreigners in the cases specified in the Order; (iv.) foreigners, whose State, King, Chief, or Government has subjected them to the jurisdiction; (v.) British ships, with their boats, &c., being within the limits of the Order (i). "British subjects" includes British protected persons, i.e., a person who is a native of any protectorate of His Majesty, or who by virtue of the Foreign Jurisdiction Act, 1890, or otherwise enjoys His Majesty's protection in China or Corea (k). The condition of recognition as a British subject is registration at the Consulate (l).

**Courts.**—(I.) The *Supreme Court*, which sits ordinarily at Shanghai (m), and consists of a Judge and as many Assistant Judges as may from time to time be required (n), has, as its ordinary original exclusive jurisdiction, civil and criminal, all His Majesty's jurisdiction, civil and criminal, within the Consulate of Shanghai (o), and also extraordinary original jurisdiction, civil and criminal, concurrent with the Provincial Courts (p), throughout China (q); may exercise visitatorial powers over the Provincial Courts (r); is a Court of record (s), a Court of Bankruptcy with the powers of the English Bankruptcy Courts (t), and has the powers of a coroner (u). The Supreme Court is also a Court of Admiralty (x); it has jurisdiction in lunacy (y), and is a Court for Matrimonial Causes, except as regards dissolution, or nullity, or jactitation of marriage (z), and a Court of Probate, with the jurisdiction of the High Court in England (a). The real property of British subjects now devolves as personal estate (b). Trial by jury is recognised in civil cases where the matter at issue is of the value of £150 if either party demand it; in other cases, if the Judge thinks fit (c). An appeal lies to the Supreme Court from the Provincial Court where the matter at issue amounts to £25, in other cases by leave of the

(i) China and Corea Order in Council, 1904, art. 5.

(k) *Ibid.*, art. 3.

(l) *Ibid.*, s. 162.

(m) *Ibid.*, s. 17.

(n) *Ibid.*, s. 7 (2).

(o) *Ibid.*, s. 21.

(p) *Ibid.*, s. 23, as to which see (II), *infra*.

(q) *Ibid.*, s. 22.

(r) *Ibid.*, s. 18.

(s) *Ibid.*, s. 20, as are also the Provin-

cial Courts, and their civil jurisdiction is to be exercised in accordance with English law for the time being, s. 89.

(t) *Ibid.*, s. 99.

(u) *Ibid.*, s. 68 (1).

(x) *Ibid.*, s. 100.

(y) *Ibid.*, s. 102 (1).

(z) *Ibid.*, s. 101.

(a) *Ibid.*, s. 104.

(b) *Ibid.*, s. 103.

(c) *Ibid.*, s. 92.

Provincial Court or Supreme Court (*d*), and from the Supreme Court to the Privy Council where the matter in issue amounts to £500 (*e*). The right to entertain appeals by special leave is reserved (*f*). The Supreme Court has criminal jurisdiction over all offences, capital and non-capital (*g*), but sentences of death require confirmation by His Majesty's Minister for China (*h*); all cases of treason or murder are to be tried by jury (*i*). The offences of rape, arson, house-breaking, robbery with violence, piracy, forgery or perjury, and any offence, which, in the opinion of the Court, would not be adequately punished by imprisonment for three months with hard labour, or a fine of £20, are to be tried with a jury or assessors unless the accused consent to these modes of trial being dispensed with (*k*). The Supreme Court has power to order deportation (*l*). Criminal appeals come before the Supreme Court by way of case stated (*m*). There is no appeal to the Privy Council in criminal cases except by special leave (*n*). The Supreme Court has jurisdiction over piracy (*o*); offences against religion (*p*); offences committed within one hundred miles of the coast of China (*q*). The Supreme Court of Hong Kong has jurisdiction in the cases last mentioned, where the offender is charged in Hong Kong (*r*).

(II.) *Provincial Courts* under Consular officers (*s*) exercise all His Majesty's jurisdiction, civil and criminal, beyond the consulate of Shanghai, not exclusively vested in the Supreme Court (*t*).

**Wei-hai-Wei.**—The territory of Wei-hai-Wei was leased to Great Britain by China "for so long a period as Port Arthur remains in the possession of Russia," by a convention made on July 1st, 1898 (*u*). Extraterritorial jurisdiction is regulated by an Order in Council of July 24th, 1901, as amended by an Order in Council of March 12th, 1903 (*x*). The limits of the Order are the island of

(*d*) China and Corea Order in Council, 1904, s. 113.

(*e*) *Ibid.*, s. 115.

(*f*) *Ibid.*, s. 117.

(*g*) *Ibid.*, s. 59 (1).

(*h*) *Ibid.*, s. 64.

(*i*) *Ibid.*, s. 45 (1).

(*k*) *Ibid.*, s. 45 (2).

(*l*) *Ibid.*, s. 83.

(*m*) *Ibid.*, ss. 85 *et seq.*; and see China and Corea (Amendment) Order, 1907, s. 7.

(*n*) *Ibid.*, s. 87.

(*o*) Sect. 72.

(*p*) Sect. 76.

(*q*) Sects. 80—82.

(*r*) *Ibid.*, s. 81.

(*s*) *Ibid.*, s. 19; and see China and Corea (Amendment) Order, 1907, s. 2.

(*t*) *Ibid.*, ss. 21, 22.

(*u*) Hertslet, vol. xxi., p. 295.

(*x*) Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 283. The Amending Order of 1903 is printed at length in Stat. R. & O., 1903, p. 792.

Liu Kung, all the islands in the Bay of Wei-hai-Wei, and a belt of land ten English miles wide along the entire coast-line of that bay, "including the territorial waters of the said islands and coast" (y).

The *High Court of Wei-hai-Wei* (z) has all jurisdiction, civil and criminal, over all persons being, and matters arising, within the territories (a). It may sit at any place within these territories (b). Provision is made for the appointment of *Magistrates* for the districts (c). The Magistrates may exercise the jurisdiction of the High Court within their respective districts, but the High Court has concurrent jurisdiction and may remove any case before it, and a Magistrate, unless he is a European British subject, cannot decide cases in which the accused or the defendant is not a native (d).

English law is to be followed generally, but in civil cases, between natives, regard is to be had to Chinese or other native law and custom (e). The High Court has rule-making powers (f). When a native is a party to any case, civil or criminal, the Court may try it with two native assessors (g). The High Court may award any punishments competent to any Court of criminal jurisdiction in England (h). The criminal jurisdiction of the Magistrate is limited to imprisonment with hard labour, not exceeding twelve months, or fine not exceeding 400 dollars (i), and does not extend to treason, murder, rape, forgery and perjury, nor, except by direction of the High Court in writing, to any offence punishable with penal servitude for seven years or upwards (k). Sentences of death require confirmation by the Commissioner (l). There is an appeal from the Magistrate to the High Court from sentence to a fine of 100 dollars or upwards, or to imprisonment for three months or upwards (m). There is an appeal on questions of law, or on points reserved, from the High Court to the Supreme Court of Hong

(y) Wei-hai-Wei Order in Council, 1901, art. 1.

(z) *Ibid.*, art. 12.

(a) *Ibid.*, art. 16.

(b) *Ibid.*, art. 17.

(c) *Ibid.*, art. 14.

(d) *Ibid.*, art. 18.

(e) *Ibid.*, art. 19.

(f) *Ibid.*, art. 19.

(g) *Ibid.*, art. 20.

(h) *Ibid.*, art. 21 (1). The jury in civil and criminal cases is five (Ord.

No. 2 of 1905). See also Ordinances No. 8 of 1905, 6 of 1905, and 3 of 1906, power of banishment of persons not British subjects or native born on second conviction by Commissioner, and No. 8 of 1903, corporal punishment except for females.

(i) *Ibid.*, art. 21 (2).

(k) *Ibid.*, art. 21 (3).

(l) *Ibid.*, art. 32.

(m) *Ibid.*, art. 34 (1).

Kong (*n*). The High Court has the bankruptcy (*o*), matrimonial (except as regards suits relative to dissolution and jactitation of marriage) (*p*) and probate (*q*), jurisdiction of the High Court of Justice in England, and the lunacy jurisdiction of the Lord Chancellor (*r*), and is a Court of Admiralty (*s*).

An appeal lies in civil cases to the Supreme Court of Hong Kong from judgments of the High Court involving a sum, or value of 500 dollars or upwards (*t*), and from the Supreme Court of Hong Kong to the Privy Council on the same conditions as those for its decision in its ordinary primary jurisdiction (*u*).

**Ottoman Dominions.**—Exterritorial jurisdiction in the Ottoman Dominions is now regulated by Order in Council of August 8th, 1899 (*x*). The limits of the order are the dominions of the Porte. As respects Egypt, the order does not extend to any place south of the 22nd parallel of north latitude (*y*), and is suspended as regards matters within the jurisdiction of Egyptian Courts established with His Majesty's concurrence (*z*).

Jurisdiction is exercised by (I.) the *Supreme Consular Court* (*a*), consisting of a Judge and assistant Judge, appointed by warrant under the Royal Sign Manual (*b*), each of whom may hold His Majesty's commission as Consul-General or Consul (*c*). The Judges sitting together constitute the Full Court (*d*). The Supreme Court ordinarily sits at Constantinople, but may sit at Alexandria or Cairo, and on emergency elsewhere (*e*). All His Majesty's jurisdiction, civil and criminal, including any conferred expressly on Provincial Courts (see *infra*) by the Order, is vested exclusively in the Supreme Court, for and within the district of the Consulate of Constantinople (*f*).

(*n*) Wei-hai-Wei Order in Council, 1901, art. 35, and cf. art. 2.

(*o*) *Ibid.*, art. 63.

(*p*) *Ibid.*, art. 66. Regard is to be paid to Chinese law and custom in relation to native marriages (*ibid.*).

(*q*) *Ibid.*, art. 67 (1). See Probate Ordinance No. 7 of 1904. Probate and administrative jurisdiction may be conferred by Ordinance on the Magistrates (art. 67 (2)).

(*r*) *Ibid.*, art. 65.

(*s*) *Ibid.*, art. 64.

(*t*) *Ibid.*, art. 68.

(*u*) *Ibid.*, art. 80.

(*x*) Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 742, amended by Order in Council, 1905, Stat. R. & O., 1905, p. 121.

(*y*) Ottoman Order in Council, 1899 s. 2.

(*z*) *Ibid.*, art. 12; and see "Egypt," p. 327.

(*a*) *Ibid.*, s. 7 (1).

(*b*) *Ibid.*, s. 7 (2).

(*c*) *Ibid.*, s. 7 (3).

(*d*) *Ibid.*, s. 7 (4).

(*e*) *Ibid.*, s. 14.

(*f*) *Ibid.*, s. 11; but see suspensory proviso as to Egyptian Courts.

The Supreme Court has also in all matters civil and criminal jurisdiction concurrent with Provincial and Local Courts (*g*); Admiralty jurisdiction within the Ottoman Dominions and waters (*h*); the matrimonial jurisdiction of the English High Court as regards British subjects, except that relating to dissolution or nullity, or jactitation of marriage (*i*), and the lunacy jurisdiction of the Lord Chancellor (*k*); also the jurisdiction of the Probate Division (*l*). Criminal and civil cases may be tried by the Court itself, or with a jury or with assessors (*m*). The Supreme Court may order the removal of prisoners for trial to Bombay or Malta (*n*). In capital cases the Supreme Court records sentence of death, and the matter is then referred to the Secretary of State (*o*). An appeal lies in civil cases involving a sum of £50 or upwards from the Provincial Court to the Supreme Court (*p*), and from the Supreme Court to the Privy Council where an amount or value of £500 is involved (*q*). An appeal lies from Provincial or Local Courts to the Supreme Court in criminal cases on points of law (*r*), but not to the Privy Council unless by special leave (*s*).

(II.) *Provincial Courts* are held by commissioned, and (III.) *Local Courts* by uncommissioned, consular officers in their respective districts (*t*), and styled *His Britannic Majesty's Consular Court* at (*Smyrna*), or as the case may be (*u*). Provincial and Local Courts have all His Majesty's jurisdiction not vested exclusively in the Supreme Court (*x*). The civil jurisdiction of the Local Court is limited to £10 (*y*). An appeal lies to the Supreme Court (*z*), which may, however, direct the appeal to be heard by the Provincial Court (*a*). The criminal jurisdiction of the Local Court is limited to a fine of £5, and offences, moreover, must be punishable

(*g*) Ottoman Order in Council, 1899, s. 13.

(*h*) *Ibid.*, s. 106.

(*i*) *Ibid.*, s. 107.

(*k*) *Ibid.*, s. 108.

(*l*) *Ibid.*, s. 109.

(*m*) *Ibid.*, s. 23 (*a*); and see further as to assessors and juries, ss. 38, 39, 58, 61 (3), 74, 75, 148, 149.

(*n*) *Ibid.*, s. 30.

(*o*) *Ibid.*, s. 46 (1) (4); see further as to criminal jurisdiction, s. 31 (1).

(*p*) *Ibid.*, s. 122.

(*q*) *Ibid.*, s. 133 (1); Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 742, at pp. 780, 781.

(*r*) *Ibid.*, s. 61.

(*s*) *Ibid.*, s. 62.

(*t*) *Ibid.*, s. 8 (1), (2).

(*u*) *Ibid.*, s. 8 (3).

(*x*) *Ibid.*, s. 12; but see (I.), *supra*, as to concurrent jurisdiction of Supreme Court.

(*y*) *Ibid.*, s. 77 (1).

(*z*) *Ibid.*, s. 77 (4).

(*a*) *Ibid.*, s. 77 (7).

on summary conviction (*b*). The criminal jurisdiction of the Provincial Court is limited to twelve months' imprisonment and a fine of £50 (*c*). As to civil and criminal appeals from the Provincial Court to the Supreme Court and appeals to Privy Council, see (*I*) (*supra*). The civil jurisdiction of the Courts is to be exercised according to the law of England for the time being (*cc*).

**Egypt.**—The juridical system at present in force in Egypt is as follows:—

(*I*) *The Mixed Tribunals* (*d*).—These Courts have exclusive jurisdiction over all civil and commercial cases (not coming within the law of personal status) between foreigners of different nationalities or Egyptians and foreigners (*e*). They have also jurisdiction in all actions relating to real rights over immovable property between any persons of whatever nationality, except when all the parties are natives (*c*). The Government is subject to the jurisdiction of these Courts in proceedings by or against foreigners (*f*). To this extent the civil jurisdiction of the Consular Courts (see *infra*) has been transferred to them. They also exercise limited criminal jurisdiction—(i.) in simple police cases (*contraventions*); (ii.) offences committed directly against Judges and officers of Courts whilst in the exercise of their functions; (iii.) offences committed directly against the execution of the judgments of Courts; (iv.) crimes imputed to Judges and officers of Courts in regard to such functions; (v.) offences committed in bankruptcy cases coming within their jurisdiction (*g*). There are three Courts of First Instance—one at Alexandria, the second at Cairo, and the third at Mansourah (*h*), composed respectively of sixteen (ten European and six native), eighteen (twelve European and six native) and eight (five European and three native) Judges. The decisions of the Tribunal are pronounced by five Judges, of whom three are foreigners and two Egyptians (*i*). One of the foreign Judges presides with the title of Vice-President, being nominated to that position by an absolute majority of the foreign and Egyptian members of the Tribunal (*i*). In commercial causes

(*b*) Ottoman Order in Council, 1899, s. 31 (3).

(*c*) *Ibid.*, s. 31 (2).

(*cc*) *Ibid.*, s. 63.

(*d*) See the Statute of Judicial Organisation for Mixed Suits in Egypt (1889).

(*e*) *Ibid.*, Tit. 1, art. 9.

(*f*) *Ibid.*, art. 10.

(*g*) Decree, March 26th, 1900.

(*h*) Statute of Judicial Organisation for Mixed Suits, Tit. 1, art. 1; and Decree, June 9th, 1887. See p. 329, note (*p*), *infra*.

(*i*) Statute, art. 2.

the Tribunal is assisted by two merchants, one an Egyptian, the other a foreigner, and having an equal vote with the Judges in their deliberations (i). The foreign Judges are divided among the different nationalities as follows: Germany, Austro-Hungary, France, Belgium, Denmark, Spain, Great Britain, Italy, Holland, Portugal, Russia, Sweden and Norway, the United States, each of which countries has two Judges in the First Instance Courts, with the exception of Portugal, which has only one, the other Portuguese Judge being in the Court of Appeal. An appeal lies to the Court of Appeal at Alexandria (k) (consisting of fifteen Judges, five Egyptian, and ten foreigners) from the judgment of the Court of First Instance. Civil and commercial cases relating solely to personality of a value not exceeding 10,000 piastres tariff, together with certain other suits, are heard by a single (European) Judge, subject to appeal before the Court of First Instance, where the amount in dispute exceeds 1,000 piastres tariff. All questions relating to marriage and divorce, testate and intestate succession, guardianship, and status are excluded from their jurisdiction. The law in force consists of—(1) a Civil Code; (2) a Commercial Code; (3) a Maritime Code; (4) Codes of Civil and Criminal Procedure; (5) a Penal Code—all based on the French Codes (l). One of the foreign Judges presides as Vice-President of the Court of Appeal (l), and its decrees are pronounced by eight Judges, of whom five are foreigners and three Egyptian (l). The number of Judges of the Court of Appeal or the Tribunals of First Instance may be increased if the Court of Appeal declares an increase necessary, no alterations being made in the fixed proportion of Egyptian to foreign Judges (m). The appointment of Judges rests with the Egyptian Government (n).

(II.) The *Consular Courts*, formed under the old Capitulations, exercise jurisdiction in criminal cases not coming within that of the Mixed Courts (see *supra*) and in civil cases between subjects of the same nationality. An appeal lies to a Court of the country to which the Consulate belongs. In the case of the British Consular Courts, the appeal lies to the Supreme Consular Court at Constantinople, and thence to the Privy Council from final orders involving an amount or value of £500 (o), which only applies, however,

(i) Statute, art. 2.

(n) *Ibid.*, art. 5.

(k) *Ibid.*, art. 3.

(o) Ottoman Order in Council, 1899,

(l) *Ibid.* See also *supra*, p. 39.

s. 133.

(m) *Ibid.*, art. 4.

to so much of Egypt as is north of the 22nd parallel of north latitude (oo).

(III.) There are *Native Courts* (a) under single Judges, which have jurisdiction over natives up to £100 in civil cases, and up to a maximum of three years' imprisonment in criminal cases, with a right of appeal to the local Court of First Instance, composed of three Judges sitting in appeal where the amount in dispute is not less than £20; (b) First Instance Tribunals which are established at Cairo, Alexandria, and five provincial centres. One English Judge is attached to each of these tribunals; (c) the Court of Appeal, at Cairo, consists of a president and twenty-five members (ten Europeans and fifteen Egyptians). The Native Courts of First Instance are subjected to judicial surveillance (not, as in the case of the inferior tribunals in India, to liability to *revision*) by a Committee of Judicial Control, consisting of the Judicial Adviser as President, the Procureur-Général, the Standing Counsel to Government, and the Director of the School of Law.

(IV.) *Cadi Courts* (First Instance Tribunals with an Appeal Court) have jurisdiction in questions of personal status. The Cadi Courts are supervised by Ulema Inspectors attached to the Ministry of Justice (p).

**Soudan.**—The administration of the Soudan is provided for by an agreement between Great Britain and Egypt, signed at Cairo, January 19th, 1899 (q). The supreme control is vested in a Governor-General, who by proclamation makes laws, orders and regulations for the good government of the territory. Penal and criminal procedure codes based on those in force in India were promulgated by proclamation in 1899. Criminal justice is administered, in each of the twelve provinces into which the territory has been divided (r), by magistrates with graded powers.

(oo) See Ottoman Dominions, *supra*, p. 325.

(p) On the whole subject, consult the Annual Reports presented by the Judicial Adviser (the late Sir John Scott and Sir Malcolm McIlwraith); Reports of His Majesty's Agent and Consul-General on the condition of Egypt and the Soudan, 1892–1904; "Law Quarterly Review," vol. xii.,

252, "Mixed Courts of Egypt" (W. E. Grigsby); "Judicial Reform in Egypt" (Sir John Scott, "Jour. Soc. Comp. Leg." N. S., vol. i., p. 240); "Reglement d'Organisation Judiciaire pour les Procès Mixtes en Egypte" (Hertslet, vol. xiv., p. 305).

(q) Hertslet, vol. xxi., p. 356.

(r) Statesman's Year Book, 1906, p. 1511.



Minor cases are heard by selected members of the administrative staff, who are given magisterial powers. Civil cases are heard by a judge (s) or magistrates appointed to preside over the several Courts (t). There is an appeal to the Judicial Commissioner at Khartoum (u). There are also Courts for matters with which Muhammadan law is specially concerned, such as succession, marriage and charitable endowments (x).

**Morocco.**—Ex-territorial jurisdiction in Morocco is regulated by an Order in Council, dated November 28th, 1889 (y). The limits of the Order are the dominions of the Sultan of Morocco, including the territorial waters (z). The Order applies within its limits to—(i.) British subjects or persons subject for the time being to British law; (ii.) British protected persons, including (a) subjects of native Princes and States in India (iii.) the property, &c., within the limits, of British subjects, whether they are within the limits or not; (iv.) Moorish subjects in certain specified cases (b); (v.) other persons submitting to the jurisdiction; (vi.) British ships, &c.; (vii.) Native subjects of any African King or Chief who consents to their being submitted to the jurisdiction (c). His Majesty's jurisdiction is vested in the "*Court for Morocco*" (d). This term means (e)—(a) the *Consular Court for Morocco* (f), held before the consular officers in the consular districts (g); and (b) the *Supreme Court of Gibraltar*, exercising original concurrent jurisdiction in Morocco under the circumstances noted below.

(a) *Consular Court for Morocco*.—The members of the Court are the consular officers, with such exceptions as regards commissioned or uncommissioned consular officers as the Secretary of State thinks fit from time to time to make (h). Although the jurisdiction in each district is generally exercised by the consular officers of that district (i), each superintending consul has original civil

(s) Civil Judges Ordinance, 1901.  
(t) Civil Justice Ordinance, 1900, ss. 5, 6; and see Egyptian Judgments Ordinance, 1901.

(u) *Ibid.*, ss. 100—115.

(x) *Ibid.*, ss. 12—14.

(y) Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 425.

(z) Morocco Order in Council, 1889, s. 4 (1).

(a) *Ibid.*, s. 4 (xii.).

(b) See ss. 106 *et seq.*

(c) *Ibid.*, s. 5.

(d) *Ibid.*, s. 7 (2).

(e) *Ibid.*, s. 4 (xvii.).

(f) *Ibid.*, s. 7 (1).

(g) *Ibid.*, s. 7 (3).

(h) *Ibid.*, s. 7 (3).

(i) *Ibid.*, s. 7 (5).

and criminal jurisdiction concurrent with that of the several un-commissioned officers within his district (*k*). Provision is made for the appointment of an assessor by the Court (*l*), having no voice in the decision of any civil or criminal case (*m*), but with the right to record dissent from its decisions (*n*). The Court has no jurisdiction over His Majesty's Minister (*o*), nor civil jurisdiction over any of his suite or domestic servants (*p*). It may give its opinion in civil cases, subject to a case being stated for the Supreme Court of Gibraltar (*q*), and an appeal lies to the Supreme Court of Gibraltar where the amount involved is equal to or more than £50 (*r*), and thence to the Privy Council on the conditions applicable to Gibraltar. The criminal jurisdiction of the Court for Morocco is limited to—(1) imprisonment not exceeding twelve months, with or without hard labour, and fine up to £50; (2) fine up to £50 without imprisonment; (3) in case of continuing offences an additional fine not exceeding 10s. a day for every day of such continuance (*s*). Provision is made for the report of criminal trials and sentences by the Court to the Consul-General (*t*). Where it appears to the Consul-General that an offence could not be adequately punished by the Court for Morocco or that it is desirable on other grounds, the accused may be sent, under the Foreign Jurisdiction Act, 1890 (*u*), for trial either at Gibraltar or at some other place in His Majesty's dominions out of the United Kingdom, the Government whereof consents to the accused persons being so sent for trial (*x*). Where the Court for Morocco sentences a person to a fine of £10 or upwards, on summary trial or trial with assessors, or to a fine of £20 or nine months' imprisonment, and such person desires to appeal, or the Court reserves a question of law or fact, an appeal lies to the Supreme Court (*y*). No appeal lies to the Privy Council in criminal cases, except by special leave of the Privy Council (*z*).

(*k*) Morocco Order in Council, 1889, s. 7 (6).

(*l*) *Ibid.*, s. 10 (1).

(*m*) *Ibid.*, s. 10 (2).

(*n*) *Ibid.*, s. 10 (3).

(*o*) *Ibid.*, s. 12 (1).

(*p*) *Ibid.*, s. 12 (2).

(*q*) *Ibid.*, s. 11 (5).

(*r*) *Ibid.*, s. 92; and see *supra*, p. 146.

(*s*) *Ibid.*, s. 19.

(*t*) *Ibid.*, s. 34 (1).

(*u*) 53 & 54 Vict. c. 37.

(*x*) Morocco Order in Council, 1889, s. 39. As to the construction of this provision see *Reg. v. Spilsbury* (1898), 79 L. T. Rep. 211; *Spilsbury v. Reg.* [1899] A. C. 392.

(*y*) *Ibid.*, s. 42.

(*z*) *Ibid.*, s. 44. As to (a) rules of

(b) *The Supreme Court of Gibraltar*.—The appellate jurisdiction of the Supreme Court has been noted under (a), *supra*. It has in all civil matters within the jurisdiction of the Court for Morocco, except as between British subjects and British protected persons on the one hand and Moorish subjects on the other hand, and in all criminal matters in which the defendant is a British subject or British protected person, original concurrent jurisdiction with the Court for Morocco, such jurisdiction being exercisable by a single Judge at any place within the limits of the Order (a), but not so as to interfere with the due exercise of its jurisdiction by the Court for Morocco, nor in criminal matters except at the request or with the consent of the Consul-General or the Secretary of State (b).

**Muscat**.—Exterritorial jurisdiction in Muscat is regulated by an Order in Council dated November 4th, 1867 (c). His Majesty's Consul has jurisdiction over all civil suits between British subjects in Muscat, with an appeal against his decision to the High Court of Bombay, where the sum at issue is of the amount or value of 200 dollars (d) and thence to the Privy Council on the same conditions as from British India (q.v.). Where the sum sought to be recovered exceeds 500 dollars, the Consul must (if possible) summon to sit with him not less than two, or more than four, British subjects as assessors (e), whose position is similar to that of assessors under the Morocco Order in Council (see *supra*). The Consul has criminal jurisdiction over British subjects—(a) alone, up to one month's imprisonment or a fine of 200 dollars (f); (b) with not less than two, or more than four, assessors, up to twelve months' imprisonment and a fine of 1,000 dollars. If the assessor dissents from a judgment or sentence, the case is to be reported to the High Court of Bombay (g). The Consul has also the right to try offences by British subjects against the stipulations of treaties between His Majesty and the Sultan of Muscat, and to punish up to 500 dollars fine or three months'

practice in the Consular Court for Morocco, see Order in Council November 27th, 1890 (noted in Stat. R. & O. 1891, p. 299); (b) fees in the Consular Court, see Order in Council May 9th, 1892 (Stat. R. & O. Rev., 1904, vol. ii., "Consul, British," p. 1.

(a) Morocco Order in Council, 1889, s. 11 (1). See p. 146.

(b) *Ibid.*, s. 11 (2).

(c) Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 472.

(d) Muscat Order in Council, 1867, s. 6.

(e) *Ibid.*, s. 7.

(f) *Ibid.*, s. 13.

(g) *Ibid.*, s. 14; and there is power to deport British subjects, *ibid.*, s. 15.

imprisonment (*h*). Cases may be remitted for trial in Bombay (*i*), and the High Court of Bombay has civil jurisdiction concurrent with the Consul in all suits between British subjects arising within the dominions of the Sultan of Muscat (*k*).

**Africa.**—Provision was made for the exercise of extritorial jurisdiction on the continent of Africa, and in the adjacent islands, by the Africa Order in Council, 1889 (*l*). The original Order extended to Madagascar. But by declaration of August 5th, 1890, a French Protectorate was established over the island; and since August, 1896, it has been a French colony, with the result that from that date the extritorial jurisdiction in the island ceased. The Order in Council provides for the creation of "local jurisdictions" by instructions of the Secretary of State (*m*). No local jurisdiction can be created (*n*) in—(i.) any place within the territorial jurisdiction of the Courts of any Colony or Possession of the Crown in Africa, including Mauritius; (ii.) Morocco, Tunis, Liberia, the Sultan of Zanzibar's territory, the Transvaal, or the Orange River Colony; (iii.) any place as to which any other independent Order in Council is in force; (iv.) any place subject to the jurisdiction of the Egyptian Courts. In addition to the Africa Order in Council, 1889, reference may be made to the Africa Orders in Council, 1892 (*o*) and 1893 (*p*), and the Africa Protectorate (Capital Sentences) Order in Council, 1898 (*q*). These Orders are expressly repealed together with the main Order, as to the British Central Africa Protectorate, by the British Central Africa Order in Council, 1902 (*r*); as to the East Africa Protectorate, by the East Africa Order in Council, 1897 (*s*), which was itself repealed by the East Africa Order in Council, 1902 (*t*); and as to Uganda, by the Uganda Order in Council, 1902 (*u*). The main Order of 1889 has also been expressly directed to cease to apply to Northern Nigeria by the Northern Nigeria Order in Council, 1899 (*x*); and to Southern

(*h*) Muscat Order in Council, 1837, s. 3.

(*i*) *Ibid.*, s. 22.

(*k*) *Ibid.*, s. 25.

(*l*) Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction, Africa," p. 1.

(*m*) Africa Order in Council, 1889, art. 5; and see Instructions of July 31st, 1891, in Hertslet, xix., i.

(*n*) *Ibid.*, art. 7.

(*o*) Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 35.

(*p*) *Ibid.*, p. 37.

(*q*) *Ibid.*, p. 39.

(*r*) *Ibid.*, p. 40.

(*s*) Stat. R. & O., 1897, pp. 134, 157.

(*t*) Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 68.

(*u*) *Ibid.*, p. 77.

(*x*) *Ibid.*, p. 153.

Nigeria (now Lagos) by the Southern Nigeria Order in Council, 1899 (*g*).

**British Central Africa.**—A British protectorate was declared over British Central Africa (then Nyassaland) by notification of May 14th, 1891 (*z*). The name "British Central Africa Protectorate" was given to it by a notification of February 22nd, 1893 (*a*). The only legal point of interest in the various treaties (*b*) relating to the Protectorate was a provision for the reference of disputes between British subjects and natives to "a duly authorised representative of Her Majesty," whose decision is to be final.

Exterritorial jurisdiction in the British Central Africa Protectorate is regulated by the British Central Africa Order in Council, 1902 (*c*). The limits of the Order are the territories of Africa, situate to the west and south of Lake Nyassa, and bounded by North-Eastern Rhodesia, German East Africa, and the Portuguese territories, besides any other territories added to these limits by an Order of the Secretary of State (*d*).

A *High Court* is established with full jurisdiction, civil and criminal, over all persons and all matters, in the protectorate (*e*). The civil and criminal jurisdiction of the High Court is to be exercised, as far as circumstances admit, in accordance with English law and practice for the time being (*f*). In all cases, civil or criminal, to which natives are parties, regard is to be had to native law, so far as it is not repugnant to, or inconsistent with, law, justice, or morality (*g*). Subordinate District and sub-District Courts have been constituted, and provision made for appeals to the High Court (*h*). The High Court possesses Admiralty jurisdiction (*i*).

A Court of Appeal for the British Central Africa, East Africa, and Uganda Protectorates was constituted by an Order in Council of August 11th, 1902 (*k*). The Court consists of the Judges of the

(*g*) Stat. R. & O. Rev., 1904, vol. v.,  
"Foreign Jurisdiction," p. 167.

(*z*) Hertslet, xix., 5.

(*a*) *Ibid.*, 8.

(*b*) *Ibid.*, xx., pp. 11 *et seq.*

(*c*) Stat. R. & O. Rev., 1904, vol. v.,  
"Foreign Jurisdiction," p. 40.

(*d*) British Central Africa Order in  
Council, 1902, art. 1.

(*e*) *Ibid.*, art. 15 (1).

(*f*) *Ibid.*, art. 15 (2).

(*g*) *Ibid.*, art. 20.

(*h*) Ordinance No. 8 of 1903 amended  
by No. 3 of 1904.

(*i*) B. C. A. Order in Council, 1902,  
art. 16.

(*k*) The Eastern African Protectorates  
(Court of Appeal) Order in Council,  
1902; Stat. R. & O. Rev., 1904, vol. v.,  
"Foreign Jurisdiction," p. 49.

Court for Zanzibar, and of the High Courts for the three Protectorates (*l*), and exercises appellate jurisdiction in civil cases whereof the subject-matter exceeds £70 in value (*m*), and in criminal cases upon any point of law (*n*). The ordinary quorum is three, but provision may be made by Rules of Court for the hearing of any specified class of cases by less than three Judges (*o*). The Court sits at such places in Zanzibar, or in any of the Protectorates, as may be fixed by Rules of Court (*p*). An appeal lies to the Privy Council from final judgments or Orders of the Court of Appeal involving an amount or value of Rs. 10,000 or upwards (*q*), or by leave of the Court in any case (*r*). The right of the Privy Council to grant special leave to appeal is expressly reserved (*s*).

The British Central African system includes also Barotziland, North-Western Rhodesia and North-Eastern Rhodesia.

**Barotziland—North-Western Rhodesia** is held by the British South Africa Company, under the Charter of November 29th, 1902 (*t*), but administered under the Orders of 1899 (*u*) and 1902, by the High Commissioner for South Africa. The limits of the Order are the parts of Africa bounded by the River Zambesi, the German South-West African Protectorate, the Portuguese possessions, the Congo Free State, and the Kafukwe or Loengi River, including such territory of the Bashukolumbwe tribe as may lie east of that river (*x*), besides any territory that may be added to these limits by an Order of the Secretary of State (*y*). So far as applicable the law of England is in force within the Protectorate (*z*). The administration of justice is vested in the Administrator's Court and Magistrates' Courts (*a*). The former consists of three judges—the Administrator, who presides, and any two officers being magistrates (*b*). Native law and custom prevails "except so far

(*l*) Eastern African Prot. (C. A.)  
Order in Council, 1902, art. 3.

(*m*) B. C. A. Ordinance No. 1 of  
1904, s. 7.

(*n*) *Ibid.*, s. 4.

(*o*) Eastern African Prot. (C. A.)  
Order in Council, 1902, art. 5.

(*p*) *Ibid.*, art. 6.

(*q*) *Ibid.*, art. 9 (1).

(*r*) *Ibid.*, art. 9 (5).

(*s*) *Ibid.*, art. 11.

(*t*) The Charter of 1889 is printed as

Parl. Paper, 1898 [C. 8773].

(*u*) Stat. R. & O. Rev., 1904, vol. v.,  
"Foreign Jurisdiction," p. 52.

(*x*) Barotziland — North - Western  
Rhodesia Order in Council, 1899,  
art. 3.

(*y*) *Ibid.*, art. 4.

(*z*) *Ibid.*, art. 16.

(*a*) Proclamation No. 6 of 1905.  
These are Courts of record and Courts  
of law and equity (*a* 5).

(*b*) *Ibid.*, s. 3.

as the same may be incompatible with the due exercise of His Majesty's power and jurisdiction" in actions between natives (c). An appeal lies from the magistrate to the Administrator's Court (d). Sentence of death awaits the special warrant of the High Commissioner before being put into force (e). In civil cases a magistrate has jurisdiction up to £50 (f).

**North-Eastern Rhodesia.**—Exterritorial jurisdiction is regulated by the North-Eastern Rhodesia Order in Council, 1900 (g). The limits of the Order are the parts of Africa bounded on the west by the boundaries of the Congo Free State and of Barotsiland—North-Western Rhodesia; on the south by the Kafukwe River and the Zambesi down to its junction with the Luangwa River; then by the mid-channel of the Luangwa River northwards to where it is cut by the 15th degree of latitude, and from this point by the Anglo-Portuguese boundary eastwards to the frontier of the British Central Africa Protectorate; on the east by that frontier; on the north by the Anglo-German frontier, the south shore of Lake Tanganyika, and the southern frontier of the Congo Free State as far west as Lake Mweru, including the island of Kilwa in the British sphere (h). These limits may be altered by Secretary of State's Order (i).

The *High Court of North-Eastern Rhodesia* has full jurisdiction, civil and criminal, over all persons and matters within the Protectorate (k). This jurisdiction is to be exercised, as far as may be, in accordance with English law (l). The Judges are appointed by the Secretary of State on the nomination of the British South Africa Company, and are paid by the Company, but are removable only by the Secretary of State (m). Sentences of death require confirmation by the Commissioner (n). An appeal lies to the Privy Council when the amount or value in dispute exceeds £500 sterling (o). There are also *Magistrates' Courts*, with jurisdiction over all persons within the districts assigned to them (p). In

(c) Proclamation No. 6 of 1905, in Council, 1900, art. 4.  
s. 6.

(d) Ss. 18 and 175.

(e) S. 18 (iii).

(f) S. 129.

(g) January 29th, 1900; Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 56.

(h) North-Eastern Rhodesia Order

(i) *Ibid.*, art. 5.

(k) *Ibid.*, art. 21 (1).

(l) *Ibid.*, art. 21 (2).

(m) *Ibid.*, arts. 22, 23.

(n) *Ibid.*, arts. 25, 26.

(o) *Ibid.*, art. 28.

(p) *Ibid.*, art. 29.

civil cases between natives, the High Court and Magistrates' Courts are to pay regard to native law so far as it is not repugnant to natural justice or morality or the law of the Protectorate, and may obtain the advice of one or two native assessors as to native law and custom; but the decision of the Court is to be given by the Judge or magistrate alone (*q*).

**East Africa Protectorate.**—Exterritorial jurisdiction in the East Africa Protectorate is regulated by the East Africa Order in Council, 1902. The limits of the Order in Council are territories bounded on the north by the Abyssinian frontier, on the east and north-east by the Indian Ocean, the Juba River, the south-western boundary of the Italian sphere; on the west by Uganda Protectorate, and on the south by the German sphere and all adjacent islands between the mouths of the rivers Juba and Umba, also any other territories included from time to time by Secretary of State's Order (*r*).

By the East Africa Order in Council, 1906 (*s*), a Governor is appointed for the Protectorate with an Executive Council and also a Legislative Council. The law in force in the Protectorate consists of the law as laid down in the Indian Criminal and Civil Codes, supplemented by a number of Ordinances brought into force under Orders in Council. In addition there is the native law and custom as administered in the Native Courts in special districts (*t*), and Muhammadan law among Muhammadan natives in the dominions of the Sultan of Zanzibar (*u*).

*The High Court of East Africa*, sitting at such places in the Protectorate as the Governor appoints (*v*), has full jurisdiction, civil and criminal, over all persons and matters in the Protectorate (*w*). Such jurisdiction is to be exercised in accordance with the Indian Civil Procedure, Criminal Procedure and Penal Codes (*x*). The High Court is a Court of Admiralty (*y*). Its Judges hold office

(*q*) North-Eastern Rhodesia Order in Council, 1900, art. 35.

(*r*) Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 68.

(*s*) *London Gazette*, October 26th, 1906, p. 7200.

(*t*) East Africa Order in Council, ss. 12, 13, 15 (2), 20. Parl. Pap. 1906, Cd. 2740, p. 7.

(*u*) See also East Africa Protectorate Law Reports, 1897—1905 (London, 1906).

(*v*) East Africa Order in Council, 1902, s. 15 (3).

(*w*) *Ibid.*, s. 15 (1).

(*x*) *Ibid.*, s. 15 (2).

(*y*) *Ibid.*, s. 16.



during pleasure (*z*). Sentences of death require confirmation by the Commissioner (*a*). An appeal lies to the Court of Appeal for the Eastern African Protectorates (*b*).

*Native Courts* are established in special districts proclaimed by the Governor (*c*) with full civil and criminal jurisdiction over all natives (*d*). The collector of the district is the judge (*e*), and may have the assistance of native assessors (*f*). The collector may transfer to any recognised tribal Chief the determination of any suit or proceeding in a Special Court (*g*). The Court can pass any sentence, but one of over six months' imprisonment requires confirmation by the High Court (*h*).

**Zanzibar.**—The relation of Zanzibar to the appellate system of the British Central Africa, East Africa, and Uganda Protectorates is dealt with under the heading "British Central Africa." Extritorial jurisdiction in Zanzibar is dealt with by the Zanzibar Order in Council (not yet in force), dated May 11th, 1906 (*i*). The limits of the Order are the islands of Zanzibar and Pemba, including territorial waters and any islets within them (*k*). The Order applies to British subjects (including protected persons) and foreigners whose Government has subjected them to the jurisdiction (*l*); and also extends to—(a) the property and personal and proprietary rights within Zanzibar of persons subject to it; (b) British ships; (c) foreign ships where under similar circumstances the High Court in England would have jurisdiction (*m*).

*The Court for Zanzibar* (*n*), consisting of a Judge, assistant Judges (*o*) and a Magistrate (*p*), exercises all His Majesty's juris-

(*z*) East Africa Order in Council, 1902, s. 17 (2).

(*a*) *Ibid.*, s. 21.

(*b*) See p. 334, *supra*, and Ord. No. 28 of 1902.

(*c*) No. 31 of 1902, s. 2.

(*d*) *Ibid.*, s. 4.

(*e*) *Ibid.*, s. 5.

(*f*) *Ibid.*, s. 6.

(*g*) *Ibid.*, s. 15.

(*h*) *Ibid.*, s. 12.

(*i*) *London Gazette*, May 15th, 1906, repealing (s. 52) the similar Order of July 7th, 1897. Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 87: which had been amended, in

points of detail, by the Zanzibar Order in Council, 1903 (December 8th, 1903), *ibid.*, p. 107, providing for the appointment of a second assistant Judge; and by an Order in Council of August 10th, 1904 (Stat. R. & O., 1904), p. 183.

(*k*) Order in Council, May 11th, 1906, s. 1. *London Gazette*, pp. 3345 *et seq.* The commencement of this Order was postponed by another Order dated December 21st, 1906. *London Gazette*, p. 9127.

(*l*) *Ibid.*, s. 6 (1).

(*m*) *Ibid.*, s. 6 (2).

(*n*) *Ibid.*, s. 8 (1).

(*o*) *Ibid.*, s. 8 (3).

(*p*) *Ibid.*, s. 8 (6).

diction in Zanzibar (*q*) and has full civil jurisdiction over all persons subject to the Order (*r*), and has Admiralty jurisdiction over vessels and persons under the Colonial Courts of Admiralty Act, 1890 (*s*). For the purposes of civil jurisdiction the Judge is deemed the District Judge and the assistant Judge the Joint District Judge; and the Court for Zanzibar the District Court, or Principal Civil Court of Original Jurisdiction in the district, within the meanings belonging to those terms in Indian law; and the High Court of Bombay is the High Court for appellate purposes (*t*). An appeal to the Privy Council lies through the High Court of Bombay, on the ordinary conditions of appeal from that Court. The Court for Zanzibar determines all civil questions between any Zanzibar subject and any person subject to the Order whether the former is plaintiff or defendant (*u*); and the High Court of Bombay has no jurisdiction in any such suit (*v*). Appeals to Bombay are regulated by the conditions affecting appeals from the District Courts in that Presidency to the High Court (*w*). A number of Indian Acts (including those of Civil (*x*) and Criminal Procedure) (*y*) are applied to the Protectorate of Zanzibar by the Order (*z*). For the purposes of criminal jurisdiction (*a*) an assistant (*b*) Judge is deemed to be the magistrate of the district; the Judge, the sessions Judge; the High Court of Bombay is the High Court, and the relations are such as in British India (*q.r.*) prevail between these three classes of tribunals (*c*). Provision is made for the removal of criminal trials, where necessary, to Bombay, by direction of the Judge (*d*), and where a criminal appeal lies to Bombay, the execution of sentences is to be postponed (*e*).

Provision is made for the constitution by the Secretary of State of *Subordinate Courts* to be held at places in Zanzibar (*f*).

(*q*) Order in Council, May 11th, 1906, s. 8 (2).

(*r*) *Ibid.*, s. 27.

(*s*) *Ibid.*, s. 29 (1) and (2), 53 & 54 Vict. c. 27.

(*t*) *Ibid.*, s. 56. See *supra*, pp. 172—175.

(*u*) *Ibid.*, s. 28 (1).

(*v*) *Ibid.*, s. 28 (2).

(*w*) *Ibid.*, s. 57. See "British India" (*ante*, pp. 172 *et seq.*).

(*x*) Act xiv. of 1882.

(*y*) Act x. of 1882, except chap. 33.

(*z*) Order in Council, May 11th, 1906, ss. 53, 56.

(*a*) *Ibid.*, part v.

(*b*) *Ibid.*, s. 53.

(*c*) But no sentence of death passed by the Zanzibar Court requires confirmation by the High Court: *ibid.* (2) and s. 54. See *supra*, pp. 179 *et seq.*

(*d*) *Ibid.*, s. 17.

(*e*) *Ibid.*, s. 55.

(*f*) *Ibid.*, s. 13.

**Somaliland.**—An Order in Council of 1889 (*g*) provided for the application to Somaliland of the Persian Coast and Islands Order, 1889 (see PERSIAN COAST AND ISLANDS, *infra*, p. 346). But the latter Order was never brought into operation. Extritorial jurisdiction in Somaliland is now regulated by an Order in Council, dated October 7th, 1899 (*h*). The limits of the Order are the territories comprised in the Somaliland Protectorate, which includes those bounded on the north by the Gulf of Aden, on the east and south by territories under the protectorate of Italy, on the west by those of the Emperor of Ethiopia and the French Protectorate of Jibuti (*i*). The Order applies to—(a) British subjects; (b) foreigners; (c) the property and rights of such subjects and foreigners, including ships (but jurisdiction over foreign ships only in cases in which it would be exercisable by the High Court in England); (d) natives where the Protectorate Court thinks fit (*k*). Criminal and civil jurisdiction is to be exercised in general conformity with Indian law and the practice of the High Court of Bombay (*l*). A number of Indian and Imperial Acts are applied by the Order (*m*). District Courts were established under the provisions of the Bombay Civil Courts Act, 1869 (*n*), which is one of the applied Acts (*o*), by order of the Secretary of State (June 26th, 1900) under the Order in Council. From them appeals lie to the Protectorate Court, held before the Consul-General, which is deemed to be the High Court (*p*). Presumably, therefore, appeals lie from the Protectorate Court direct to the Privy Council on the same conditions as from British India. In criminal matters, the Protectorate Court is to have all the powers of a Sessions Court in India (*q*), and, as regards inferior Courts, the appellate powers and powers of revision of an Indian High Court (*r*). Sentences of death passed by the Protectorate Court are only to be reconsidered by the Secretary of State if the Consul-General thinks it necessary (*s*).

The Somaliland Order in Council, 1904 (*t*), provides (*u*), that in

(*g*) Stat. R. & O. Rev., 1891, vol. iii., p. 863.

(*h*) Stat. R. & O. Rev., 1904, "Foreign Jurisdiction," p. 173.

(*i*) Somaliland Order in Council, 1899, s. 1.

(*k*) *Ibid.*, ss. 5, 6.

(*l*) *Ibid.*, s. 7.

(*m*) *Ibid.*, ss. 7, 8, Schedule.

(*n*) No. XIV. of 1869.

(*o*) Somaliland Order in Council, 1899, s. 23 (*b*).

(*p*) *Ibid.*, s. 23 (*a*). See pp. 172 *et seq.*, *supra*.

(*q*) *Ibid.*, s. 10 (*a*).

(*r*) *Ibid.*, s. 10 (*b*). See pp. 182–185.

(*s*) *Ibid.*, s. 14.

(*t*) June 23rd, 1904; Stat. R. & O., 1904, p. 189.

(*u*) *Ibid.*, art. 12.

all cases, civil and criminal, to which natives are parties, regard is to be paid to native law, so far as it is applicable and not repugnant to law, justice, and morality, and (x) that the production of a grant of probate or letters of administration is necessary to establish the right to receive or recover the estate—situate in the Protectorate—of any deceased person.

The Somaliland Order in Council, 1906, authorises the Commissioner "to make Ordinances for the administration of justice, the raising of revenue, and generally for the peace, order and good government of all persons in the Protectorate" (y).

**Uganda.**—The extritorial jurisdiction is regulated by the Uganda Order in Council, 1902 (z). The limits of the Order are:—(a) the Central Province, comprising the districts of Elgon, Karamoja, Busoga, Bukedi, and Lobor; (b) the Rudolf Province, comprising the districts of Turkwel, Turkana, and Dabossa; (c) the Nile Province, comprising the districts of Dodinga, Bari, and Shuli; (d) the Western Province, comprising the districts of Unyoro, Toro, and Achole; and (e) the Kingdom of Uganda, with the islands appertaining to it(a). The limits may be altered by Secretary of State's Order (a).

The *High Court* of Uganda has full jurisdiction, civil and criminal, over all persons and matters in the Protectorate(b). The jurisdiction is exercised in general conformity with the Indian Civil Procedure, Criminal Procedure, and Penal Codes (c). It sits at such places as the Commissioner appoints (d). The High Court has Admiralty jurisdiction (e). Its Judges hold office during pleasure (f). An appeal lies to the Court of Appeal for the Eastern African Protectorates (g).

*Subordinate Courts* have been constituted, and include four classes of Criminal Courts—Courts of Session and magistrates of the first, second and third classes (h). The several Courts have the

(x) Somaliland Order in Council, 1904, art. 13.

(y) January 8th, 1906, *London Gazette*, p. 283.

(z) Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 77.

(a) Uganda Order in Council, 1902, art. 1.

(b) *Ibid.*, art. 15 (1). It is a Court of record.

(c) *Ibid.*, art. 15 (2).

(d) *Ibid.*, art. 15 (3).

(e) *Ibid.*, art. 16 (1).

(f) *Ibid.*, art. 17 (2).

(g) See Eastern African Protectorates' (Court of Appeal) Order in Council, 1902, Stat. R. & O. Rev. 1904, "Foreign Jurisdiction," p. 49.

(h) Ordinance No. 10 of 1902, s. 1.

powers given to similar Courts by the Indian Code of Criminal Procedure (i). The Courts exercise jurisdiction over Europeans and Americans, but if the offence which appears to have been committed is punishable with death or with transportation for life the commitment shall be to the High Court (k). In the High Court and Court of Sessions all trials are held with the aid of two assessors (l). The jurisdiction of the Courts is exercised in conformity with the Indian Criminal Procedure and Penal Codes (m), of which the provisions relating to appeals from Courts of Session and Magistrates' Courts apply to the Courts of the Protectorate (n). For the purpose of civil jurisdiction, local areas may be defined by the Commissioner and placed under subordinate judges (o) who are to exercise their jurisdiction in conformity with the Indian Code of Civil Procedure (p).

*Native Courts.*—A British Native Court with the Collector as judge (q) may be established by the Commissioner in any district of the Protectorate (r). The Collector may appoint one or more native assessors, but with a consultative voice only (s). The procedure laid down in the Indian Codes of Civil and Criminal Procedure is to be followed so far as applicable to the natives (t). The High Court has power to revise sentences which appear unjust (u), and is also a Court of Appeal from the British Native Court (x).

*Unyoro Native Courts.*—In addition to the High Court and Subordinate Courts there are the following Courts (y) in Unyoro for the trial of cases between natives of that province :—(1) Native Appeals Court of Unyoro, (2) the Court of the Lukiko, (3) Sadza Courts and (4) the (Sub-chiefs) Courts. An appeal lies to the High Court in criminal matters involving sentence of death, imprisonment for more than five years, or a fine of Rs.500, and in civil cases involving a sum of more than Rs.1500 (z). The Native Appeals Court is formed of a European official and native

(i) Ordinance No. 10 of 1902, s. 6.  
 (k) *Ibid.*, s. 8.  
 (l) *Ibid.*, s. 9.  
 (m) *Ibid.*, s. 10. See *supra*, pp. 179  
 —183.  
 (n) *Ibid.*, ss. 11, 16.  
 (o) *Ibid.*, s. 13.  
 (p) *Ibid.*, s. 15; and see No. 6 of  
 1905.

(q) Ordinance No. 10 of 1905, s. 4.  
 (r) *Ibid.*, s. 2.  
 (s) *Ibid.*, s. 5.  
 (t) *Ibid.*, s. 9.  
 (u) *Ibid.*, s. 12.  
 (x) *Ibid.*, s. 13.  
 (y) Ordinance No. 5 of 1905, s. 2.  
 (z) *Ibid.*, s. 12.

chiefs (a). To it an appeal lies from the other three Courts (b). The Court of the Lukiko decides (1) all charges of murder by a native of a native, (2) all Banyoro cases when the punishment awardable by the Sadza or Sub-chiefs Courts is inadequate for the offence, and (3) all Banyoro cases when the matter in dispute exceeds Rs.50 (c). Sentence of death awaits the confirmation of the Commissioner (d). An appeal lies from the Sadza Court or Sub-chiefs Court to the Court of the Lukiko (e). The Sadza Court can deal with offences punishable by six months' rigorous imprisonment or fine up to Rs.30 or whipping of twelve lashes and civil cases not exceeding Rs.50 (f). The Sub-chiefs Court can punish all Unyoro offences by natives with one month's imprisonment, fine of Rs.5, or whipping of six lashes, and deals with all Banyoro civil cases not above Rs.15 in value (g).

**Southern Rhodesia.**—Exterritorial jurisdiction is regulated by the Southern Rhodesia Order in Council, 1898 (h).

The law in force is Roman-Dutch law as it is administered in Cape Colony. By the Order in Council it is enacted that "the law to be administered by the High Court and by the Magistrates' Courts . . . shall, so far as not inapplicable, be the same as the law in force in the Colony on the 10th day of June, 1891, except so far as that law has been modified by any Order in Council, Proclamation, Regulation or Ordinance in force at the date of the commencement of this Order (i).

The *High Court of Southern Rhodesia* (the limits of the Order are defined by art. 4) has full jurisdiction, civil and criminal, over all persons and matters in the Protectorate (k). Its Judges are appointed by the Secretary of State, on the nomination of the British South Africa Company, and are removable only by the Secretary of State (l). The High Court sits at such place as the Administrator in Executive Council prescribes (m). Sentences of death require confirmation by the High Commissioner (n). An

(a) Ordinance No. 5 of 1905, s. 3.

(b) *Ibid.*, s. 5.

(c) *Ibid.*, s. 7.

(d) *Ibid.*, s. 15.

(e) *Ibid.*, s. 8.

(f) *Ibid.*, s. 9.

(g) *Ibid.*, s. 10. Cases can be transferred from one Court to another by the Commissioner, s. 11.

(h) Amended by Order in Council of 1903. Stat. B. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 115.

(i) Southern Rhodesia Order in Council, 1898, art. 49 (2).

(k) *Ibid.*, art. 49 (1).

(l) *Ibid.*, art. 52.

(m) *Ibid.*, art. 54.

(n) *Ibid.*, arts. 55, 56.

appeal lies from the High Court to the Supreme Court of Cape Colony when the amount or value exceeds £100 (*o*); in other cases, by leave (*p*), and from the Supreme Court to the Privy Council on the same conditions as from a judgment of the Supreme Court in its ordinary jurisdiction (*q*). The High Court may, before deciding any matter, when the amount or value exceeds £100, state a case in writing for the opinion of the Supreme Court (*r*). Provision is made for the admission of appeals in criminal cases (*s*), and for points being reserved by the High Court, either on trials before it (*t*) or upon review of the decisions of inferior Courts (*u*).

*Magistrates' Courts* are provided for with the jurisdiction of Resident Magistrates in Cape Colony (*x*). An appeal lies to the High Court under similar conditions as in Cape Colony (*y*). In civil cases between natives the High Court and the Magistrates are to be guided as far as possible by native law, and one or two native assessors may be called in to advise (*z*).

**Persia.**—Exterritorial jurisdiction is regulated by the Persia Order in Council, December 13th, 1889 (*a*). The limits of the Order are the Dominions of the Shah of Persia (*b*), excluding, except where otherwise provided, the Persian coast and islands (*c*), with regard to which there is a separate Order. (See *infra*, PERSIAN COAST AND ISLANDS.)

The law applied consists of—(i.) the provisions of the Order; (ii.) the common law, equity and statute law for the time being in force in England; (iii.) reasonable customs, where not incompatible with the Order (*d*). The following Courts are established:

(I.) *Courts of First Instance*, called *Consular Courts*, held before Consular Officers in such districts as the Secretary of State directs (*e*).

(II.) The *Court of the Consul-General*, with original and appellate jurisdiction, as indicated below (*f*).

(*o*) Southern Rhodesia Order in Council, 1898, art. 58 (1).

(*p*) *Ibid.*, art. 59.

(*q*) *Ibid.*, art. 58 (4).

(*r*) *Ibid.*, art. 58 (5).

(*s*) *Ibid.*, art. 60.

(*t*) *Ibid.*, art. 63.

(*u*) *Ibid.*, arts. 64, 65.

(*x*) *Ibid.*, arts. 69—73. They are Courts of record, s. 69.

(*y*) *Ibid.*, art. 74. See *supra*, p. 304.

(*z*) *Ibid.*, arts. 50, 51.

(*a*) Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 575. This Order is amended by the Persia (Judicial Fees) Order in Council, 1898, and the Persia (Regulation) Order in Council, 1901 (*ibid.*, pp. 688, 689).

(*b*) Persia Order in Council, 1889, s. 3.

(*c*) *Ibid.*, s. 4.

(*d*) *Ibid.*, ss. 6, 7.

(*e*) *Ibid.*, s. 10 (1).

(*f*) *Ibid.*, s. 10 (2).

(III.) The *Provincial Court in the Consul-General's District* may be held before the Consul-General, Vice-Consul, or other Consular Officer (*g*). The Consul-General has an original concurrent jurisdiction with the Provincial Courts (*h*), and may try any case, civil or criminal, in any place in Persia (*i*). Each Provincial Court is required to furnish him with an annual report on every case, civil and criminal, brought before it (*k*). Each of the Courts above-named is a Court of Record (*l*), and is auxiliary to all other Courts (*m*); each is also a Court of Law and Equity (*n*) and a Court of Bankruptcy, with the powers—as regards resident British subjects and their debtors and creditors, being resident British subjects, or natives or foreigners submitting to the jurisdiction—of English Courts of Bankruptcy (*o*). The Consul-General has the lunacy jurisdiction of the Lord Chancellor over resident British subjects (*p*), the matrimonial jurisdiction of the English Divorce Court—except that relative to dissolution or jactitation, or nullity of marriage (*q*), and the jurisdiction of the Probate Court—a jurisdiction shared by the Provincial Court in non-contentious cases (*r*). Where a question of law is raised in the Provincial Court, a case may be stated for the Consul-General, without petition or pleading (*s*). The Provincial Court is to hear, with assessors (of whom there are ordinarily no fewer than two or more than four (*t*), and who have no voice in the decision (*u*)), suits for debts or damages of an amount of £300 or upwards (*x*). An appeal lies from the Provincial Court to the Consul-General from decisions in civil suits for sums of, or on claims amounting to, £50 or upwards (*y*), and from the Consul-General to the Privy Council where the decision is for £500 or upwards (*z*). Capital offences are to be tried by the Consul-General, with an assessor or assessors (*a*), and sentences of death for murder require confirmation by the Secretary of State (*b*). The Consul-General has original jurisdiction to try all other offences.

(*g*) Persia Order in Council, 1889, s. 10 (3).

(*h*) *Ibid.*, s. 19.

(*i*) *Ibid.*, s. 20.

(*k*) *Ibid.*, s. 24, and see 21 as to cases there pending suitable for hearing by Consul-General.

(*l*) *Ibid.*, s. 22.

(*m*) *Ibid.*, s. 23.

(*n*) *Ibid.*, s. 67.

(*o*) *Ibid.*, s. 68.

(*p*) *Ibid.*, s. 69.

(*q*) *Ibid.*, s. 70.

(*r*) *Ibid.*, s. 71.

(*s*) *Ibid.*, s. 87.

(*t*) *Ibid.*, s. 17.

(*u*) *Ibid.*, s. 18.

(*x*) *Ibid.*, s. 112.

(*y*) *Ibid.*, s. 214.

(*z*) *Ibid.*, s. 230.

(*a*) *Ibid.*, s. 239.

(*b*) *Ibid.*, s. 241.



Where, however, penal servitude or imprisonment for more than a year may be imposed, there should, if practicable, be a trial with an assessor or assessors (*c*); and a similar provision applies in the Provincial Courts, where an offence, if proved, would not be adequately punished by three months' imprisonment or a fine of £20 (*d*). An appeal lies on questions of law to the Consul-General from convictions in the Provincial Court (*e*). There are provisions as to deportation (*f*). Registration is necessary to the enjoyment of the extritorial privileges (*g*).

**Persian Coast and Islands.**—Extritorial jurisdiction is regulated by an Order in Council dated December 18th, 1889 (*h*). The limits of the Order are the coast and islands of the Persian Gulf and Gulf of Oman (*i*). The Order applies to—(i.) British subjects being within the limits, whether resident or not (*k*); (ii.) British ships being within the limits (*l*); (iii.) Persian subjects and foreigners (*m*) in cases where they practically submit to the jurisdiction (*n*). Certain portions of the law of British India are applied, *e.g.*, the Penal Code and Codes of Civil and Criminal Procedure (*o*). The Consul-General corresponds to the Indian District Judge (*p*), or, in criminal matters, the Sessions Judge (*q*). The High Court for Bombay entertains appeals on the same conditions as from District and Sessions Judges (*r*), and appeals lie from it to the Privy Council on the same conditions as from British India (*s*). British subjects must be registered (*t*). The Consul-General has the jurisdiction of a Court of Vice-Admiralty under the Slave Trade Acts (*u*). Provision is made for the appointment of a Judicial Assistant (*x*). For the purposes of criminal jurisdiction he is to be deemed to be the District Magistrate in the Indian juridical system (*y*).

(*c*) Persia Order in Council, 1889, s. 239.

(*d*) *Ibid.*, s. 242.

(*e*) *Ibid.*, s. 277.

(*f*) *Ibid.*, s. 281.

(*g*) Ss. 12—15.

(*h*) Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 667.

(*i*) Persian Coast and Islands Order in Council, 1889, s. 3 (1).

(*k*) *Ibid.*, s. 5 (1) (i).

(*l*) *Ibid.*, s. 5 (1) (ii).

(*m*) *Ibid.*, s. 5 (1) (iii).

(*n*) See more particularly, *ibid.*, ss. 34—37.

(*o*) *Ibid.*, s. 7.

(*p*) *Ibid.*, s. 23.

(*q*) *Ibid.*, s. 8.

(*r*) *Ibid.*, ss. 20, 28.

(*s*) See *ante*, pp. 178 *et seq.*

(*t*) *Ibid.*, s. 38.

(*u*) *Ibid.*, s. 32.

(*x*) *Ibid.*, s. 3 (4).

(*y*) *Ibid.*, s. 8, see above p. 340 as to contemplated extension of this Order to Somaliland.

**Siam.**—Exterritorial jurisdiction in Siam is based upon the treaty signed at Bangkok, April 18th, 1855, with a supplemental treaty dated May 13th, 1856 (*z*). It is now regulated by the Siam Order in Council, 1906 (*a*). The Order applies (*b*) to—(i.) British subjects, including (*c*) British protected persons; (ii.) property and rights in Siam of British subjects, whether such subjects are in Siam or not; (iii.) Siamese subjects and foreigners (*d*) subjects or citizens of a State other than Siam, in amity with His Majesty; (iv.) foreigners whose Government, &c., has consented to the exercise of such jurisdiction over them (*e*); (v.) British ships with their boats and the persons and property on board, being within the Siamese dominions.

The following Courts exercise the jurisdiction:

(I.) *His Britannic Majesty's Court for Siam* (*f*), held before a single Judge (who must be a barrister or advocate of at least five years' standing) (*g*), and the "Full Court" held before two or more Judges (*h*).

(II.) *District Courts*, held by the Consular Officer in each consular district (*i*), and styled "H. B. M.'s District Court at Bangkok" or as the case may be (*k*).

Travelling District Judges who are consular officers may be appointed, who have all the powers and authority of a District Court (*l*).

The Court for Siam, which sits ordinarily at Bangkok, but may sit elsewhere, as circumstances require (*m*), has in all matters, civil and criminal, an original jurisdiction, concurrent with the jurisdiction of the District Courts (*n*). The Judge, or an Assistant Judge by his direction, may visit any place in Siam and there hear and determine any case, civil or criminal, and examine the records of the District Courts (*o*); and any case, civil or criminal, pending in a District Court, may be removed to the Court for Siam (*p*). The Court for Siam and the District Court are Courts of Record (*q*), and are auxiliary to each other in all particulars relative to the administration of justice, civil and criminal (*r*). Civil and criminal

(*z*) Hertslet, x., pp. 557, 565.

(*a*) Order in Council of April 4th, 1906, *London Gazette*, pp. 2513 *et seq.*

(*b*) Siam Order in Council, 1906, s. 5.

(*c*) See *ibid.*, s. 3.

(*d*) *Ibid.*

(*e*) As to proceedings in cases (iii.) and (iv.), see ss. 158—160.

(*f*) *Ibid.*, s. 7 (1).

(*g*) *Ibid.*, s. 7 (3).

(*h*) *Ibid.*, s. 7 (4).

(*i*) *Ibid.*, s. 14 (1).

(*k*) See *ibid.*, s. 14 (2) (3).

(*l*) *Ibid.*, s. 15.

(*m*) *Ibid.*, s. 16 (2).

(*n*) *Ibid.*, s. 16 (1).

(*o*) *Ibid.*, s. 16 (3).

(*p*) *Ibid.*, s. 18.

(*q*) *Ibid.*, s. 19.

(*r*) *Ibid.*, s. 21.

cases may be tried—(i.) in the Court for Siam by the Court itself, or by the Court with a jury of five (*s*), or with assessors (*t*); (ii.) in the District Court, by the Court itself or by the Court with assessors (*u*). The verdict must be unanimous in criminal cases and—unless the parties otherwise agree—in civil cases also (*x*).

Certain statutory and other offences, *e.g.*, offences as regards merchandise marks, patents, copyright, are created by the Order (*y*). Provision is also made for the enactment of Regulations, made by the British Minister, subject to the approval of the Secretary of State, and to be called King's Regulations, under which penalties may be imposed (*z*). With these exceptions, no act is to be deemed an offence which would not be so deemed by a Court of Justice having criminal jurisdiction in England (*a*); and criminal jurisdiction, as also civil jurisdiction (*b*), is to be exercised according to the principles of English law (*c*).

Treason and murder must be tried with a jury before the Court for Siam, or, in the case of British subjects, where it appears expedient (*d*), before the Supreme Court of the Straits Settlements (*e*). Charges of rape, arson, housebreaking, robbery with violence, forgery and perjury, and other cases in which, in the opinion of the Court, a severer penalty than three months' imprisonment with hard labour, and (*or*) a fine of £20 would be required, are triable by jury or assessors, unless the accused consents to be tried by the Court alone (*f*). The Court for Siam may award any punishment competent in England provided that—(a) imprisonment with hard labour is substituted for penal servitude; (b) a fine exceeding £500 may not be awarded (*g*); (c) capital sentences are subject to confirmation by the British Minister (*h*).

The limits of punishment by the District Court are twelve months' imprisonment with or without hard labour, and with or without a fine not exceeding £100 (*i*).

(*s*) Siam Order in Council, 1906, s. 24 (3).

(*t*) *Ibid.*, s. 22 (a).

(*u*) *Ibid.*, s. 22 (b), for the qualification, &c., of jurors and assessors, see ss. 24, 25.

(*x*) *Ibid.*, s. 24 (4).

(*y*) *Ibid.*, ss. 59 *et seq.*

(*z*) *Ibid.*, ss. 135—138.

(*a*) *Ibid.*, s. 26 (1).

(*b*) See *ibid.*, s. 75.

(*c*) *Ibid.*, s. 26 (2). For deportation of British subjects, see s. 69.

(*d*) See *ibid.*, s. 41.

(*e*) *Ibid.*, s. 36 (1). See *supra*, p. 198.

(*f*) *Ibid.*, s. 36 (2).

(*g*) *Ibid.*, s. 49 (1).

(*h*) *Ibid.*, s. 54.

(*i*) *Ibid.*, s. 49 (2).

The Court for Siam and the District Court have concurrent bankruptcy jurisdiction over resident British subjects and their debtors and creditors being British subjects, and foreigners submitting to the jurisdiction of the Court (*k*). The Court for Siam has exclusive Admiralty jurisdiction (*l*), and the matrimonial jurisdiction—except as to dissolution or nullity or jactitation of marriage—of the English High Court as regards British subjects (*m*). It has also, in similar cases, lunacy (*n*) and probate (*o*) jurisdiction. The District Court has limited lunacy (*p*) and probate (*q*) jurisdiction.

An appeal lies—(a) in criminal cases from the District Court or Court for Siam to the Full Court (*r*), and no appeal lies to the Privy Council, except by leave of the Privy Council (*s*); (b) in civil cases—from the District Court or the Court for Siam to the Full Court, where a sum or value of £50 is involved (*t*), and in any case by leave of the Court below (*u*) or above (*x*); and from the Full Court to the Privy Council, where an amount or value of £500 is involved (*y*), or by special leave (*z*).

The Siam Order in Council does not apply to any civil or criminal case coming within the limits of the International Court so long as the Treaty of September 3rd, 1888, remains in force, unless and until it has been transferred to the District Court at Chiangmai in pursuance of Art. 8 of the Treaty (*a*).

**British North Borneo (*b*).**—Exterritorial jurisdiction is based upon an additional article to the Treaty made with the Sultan of Borneo in 1847 (*c*), supplemented by an agreement in 1856 (*d*). A British Protectorate was established over North Borneo by an agreement of May 12th, 1888 (*e*), which enabled (*f*) the Imperial Government to establish British Consular Officers in any part of the territories comprised in the Order. The law of the country is based on the

(*k*) Siam Order in Council, 1906, s. 89.

(*l*) *Ibid.*, s. 90.

(*m*) *Ibid.*, s. 91, and alimony, *ibid.*

(*n*) *Ibid.*, s. 92.

(*o*) *Ibid.*, ss. 93—102.

(*p*) *Ibid.*, s. 92 (2), (3).

(*q*) *Ibid.*, s. 94 (2).

(*r*) *Ibid.*, s. 70.

(*s*) *Ibid.*, s. 73.

(*t*) *Ibid.*, s. 103 (1).

(*u*) *Ibid.*, s. 103 (2).

(*x*) *Ibid.*, s. 103 (3).

(*y*) *Ibid.*, s. 104 (1).

(*z*) *Ibid.*, s. 104 (5).

(*a*) *Ibid.*, ss. 154—157.

(*b*) The Charter of the British North Borneo Company will be found in *London Gazette* (5448—53), November 8th, 1881.

(*c*) Hertalet, viii., at p. 89.

(*d*) *Ibid.*, xiv., p. 1018.

(*e*) *Ibid.*, xviii., 225.

(*f*) *Ibid.*, art. 4.

Indian Penal, Criminal Procedure, and Civil Procedure Codes, with an adaptation, in special instances, of Acts in force in British Colonies, and an Imam's Court for administration of Muhammadan law (*g*). There are at present three Judges of Sessions Courts and nine Magistrates. (See, further, BRUNEI, LABUAN, SARAWAK.)

**Brunei.**—The extritorial jurisdiction of the Crown in the State of Brunei was provided for by an agreement of September 17th, 1888 (*h*), and is exercised now under the Brunei Order in Council, 1901 (*i*), amended by Order in Council, July 28th, 1906 (*k*). The limits of the Order mean the dominions for the time being of the Sultan of Brunei and the islands and territorial waters belonging thereto (*l*). The powers created by the Order apply to (*m*)—

- (a) British subjects, including (*l*) British protected persons, *i.e.*, any person who either is a native of any Protectorate of His Majesty and is temporarily in Brunei, or under the Foreign Jurisdiction Act, 1890 (*n*), or otherwise enjoying the protection of the Crown there;
- (b) The property and personal proprietary rights and obligations of British subjects in Brunei—including British ships;
- (c) Foreigners who submit themselves to the jurisdiction;
- (d) Foreigners whose State, King, Chief, or Government has subjected them to the jurisdiction.

By an agreement concluded at the end of 1905, the Sultan now has the advice of a British resident (*o*), and by Letters Patent of April 3rd, 1906, the Governor of the Straits Settlements was appointed High Commissioner for the protected State of Brunei (*p*).

*The Court for Brunei* (*q*), held before the Consul or a Consular officer, sits at Brunei, and is a Court of Record. The Consul has all the powers of a sheriff of a county in England (*r*). Civil or criminal cases may be heard with one, two, or not more than four, assessors—

(*g*) C. O. List, 1905, "British North Borneo."

(*h*) Hertslet, xviii., 228.

(*i*) Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 189.

(*k*) *London Gazette*, August 3rd, 1906, p. 5331.

(*l*) Brunei Order in Council, 1901, art. 3.

(*m*) *Ibid.*, 4 (1).

(*n*) 53 & 54 Vict. c. 37.

(*o*) Colonial Office List, 1906.

(*p*) *London Gazette*, April 8rd, 1906, p. 2326. See *supra*, p. 193.

(*q*) Brunei Order in Council, 1901, art. 7.

(*r*) *Ibid.*, art. 10.

“indifferent British subjects of good repute resident in Brunei, or belonging to a British ship.” An assessor has no vote in the decision of any case civil or criminal, but if he dissents, the fact and grounds of his dissent are to be recorded (*s*).

*The Supreme Court of the Straits Settlements* (*t*), has appellate jurisdiction within the limits of the Order, and may exercise original criminal jurisdiction (*u*) when a person is sent for trial to the Straits Settlements (*x*); and original civil and criminal jurisdiction in Brunei and original criminal jurisdiction within the limits of the Order, at the request, or in case of the death, absence, or incapacity of the consular officer (*y*). There is an appeal in criminal cases to the Supreme Court of the Straits Settlements at the instance of any person convicted, or on points reserved (*z*), but not therefrom to the Privy Council except by special leave (*a*). There are provisions for the punishment of British subjects in certain specified cases (*b*). The Court for Brunei has civil jurisdiction in bankruptcy (*c*), lunacy (*d*), probate and administration (*e*). There is an appeal to the Supreme Court, where the amount or value of 500 dollars is involved (*f*), and thence to the Privy Council, as if the decision were pronounced by the Supreme Court in its ordinary primary jurisdiction (*g*).

**Sarawak** was placed under British protection by agreement with the Rajah of Sarawak, signed June 14th and September 5th, 1888 (*h*). His Majesty's Government has the right to establish Consular officers in Sarawak (*i*). The relations of Sarawak with North Borneo and Brunei are governed by agreements of May 12th, 1888 (*j*), and September 17th, 1888 (*k*).

**Pacific Islands.**—As far back as 1817 (*l*), legislation was found necessary to protect, among other persons, the islanders of the

(*a*) Brunei Order in Council, 1901, art. 11.

(*t*) *Ibid.*, art. 13 (1), *i.e.*, the Full Court.

(*u*) *Ibid.*, art. 14.

(*x*) See art. 18.

(*y*) *Ibid.*, art. 14.

(*z*) *Ibid.*, art. 28. See p. 198, *supra*.

(*a*) *Ibid.*, art. 30.

(*b*) *Ibid.*, arts. 36 *et seq.*

(*c*) *Ibid.*, art. 60.

(*d*) *Ibid.*, art. 61.

(*e*) *Ibid.*, arts. 62 *et seq.*

(*f*) *Ibid.*, art. 69.

(*g*) *Ibid.*, art. 80.

(*h*) Hertallet, xviii., p. 227.

(*i*) Treaty, art. 4.

(*j*) Hertallet, xviii., p. 225.

(*k*) *Ibid.*, at p. 229.

(*l*) 57 Geo. III. c. 53. This Act originally extended to Honduras, New Zealand, and Otaheite, as well as to the South Pacific. It has been repealed (S. L. R., 1873) as to Honduras, New Zealand, and Otaheite, but is still in force for other islands and places.

South Pacific from crimes of violence. The Murders Abroad Act, 1817 (*l*), accordingly provided for the trial and punishment, in any part of the dominions of the Crown, of any murders or manslaughters committed by persons belonging to British ships within any of these islands not within the British dominions, nor subject to any European State or Power, nor within the territory of the United States. Another statute, passed in 1828 (*m*), empowered the Courts of New South Wales and Van Diemen's Land, which it created, to try all offences of whatever nature committed on the sea, or where the Admiral hath jurisdiction, or committed in the Pacific Ocean by any persons of the class specified in the Act of 1817. These enactments having been found insufficient, two Acts of 1872 (*n*) and 1875 (*o*) further dealt with the subject. The former (*p*) "assumed that the offenders were to be tried in the Courts of one of the Australasian colonies, and only made provision for obtaining evidence beyond the jurisdiction of those colonies." The latter (*q*) enabled the Sovereign to constitute the office of High Commissioner for the Pacific Islands, and to create a Court of Justice with civil, criminal, and Admiralty jurisdiction over them. These powers were exercised by the Western Pacific Orders in Council, 1877 (*r*), 1879 (*s*), 1880 (*t*)—repealed by the Pacific Order in Council, 1893 (*u*), by which the extritorial jurisdiction in the Western Pacific Islands is now regulated. The limits of the Order are the Pacific Ocean and the islands and places therein, including those which are for the time being—(a) British settlements; (b) under the protection of His Majesty; (c) under no civilised government (*x*). The original local application of the Order included (*y*) the Friendly Islands, the Navigators' Islands, subject (*z*) to the Samoa Conventions (*a*), the Union, Phoenix, Ellice, and Gilbert Islands, the

(*l*) See last note.

(*m*) 9 Geo. IV. c. 83.

(*n*) The Pacific Islanders Protection Act, 1872 (35 & 36 Vict. c. 19).

(*o*) The Pacific Islanders Protection (Amendment) Act, 1875 (38 & 39 Vict. c. 51), and see the Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 37).

(*p*) See Jenkyns, "British Rule and Jurisdiction beyond the Seas," p. 145.

(*q*) 38 & 39 Vict. c. 51, ss. 6, 7.

(*r*) Hertslet, xiv., 871.

(*s*) *Ibid.*, p. 1245.

(*t*) *Ibid.*, xv., p. 752.

(*u*) Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 484.

(*x*) Pacific Order in Council, 1893, art. 4.

(*y*) *Ibid.*, art. 6 (1).

(*z*) *Ibid.*, art. 6 (2).

(*a*) Hertslet, xviii., p. 1068 and xxi., pp. 1178—1183.

Solomon Islands, so far as they are not within the jurisdiction of the German Empire, and the Santa Cruz Islands. In islands and places, which are not British settlements or under the protection of the Crown, the jurisdiction is exercisable only over British subjects and foreigners or natives, who by being on board a British ship or otherwise have come under a duty of allegiance to the Crown (*b*).

The High Commissioner for the Western Pacific (*c*) is appointed by Commission under the Sign Manual (*d*). A Special Commissioner may be appointed by the Crown (*e*), and the High Commissioner may appoint a Judicial Commissioner or Deputy Commissioner as an Assistant High Commissioner (*f*). The Chief Justice—at present the only Judge of the Supreme Court of Fiji—is *ex officio* Judicial Commissioner (*g*). All the jurisdiction of the Crown under the Order is vested in the High Commissioner's Court, which is a Superior Court of Record, and a Court of law and equity, consisting of the High Commissioner, the Judicial Commissioner, and the Deputy Commissioner or Commissioners (*h*). The whole jurisdiction of the Court may be exercised by the High Commissioner or the Judicial Commissioner, either within any island or place to which the Order applies (whether or not any Deputy Commissioner has been assigned thereto) or in Fiji (*i*). The whole or any part of such jurisdiction may be exercised by a Deputy Commissioner in any district to which he has been assigned (*k*). The Supreme Court of Fiji is a Court of Appeal for the purposes of the Order (*l*), and has also original jurisdiction to try in Fiji any civil or criminal cause or matter arising at any place within the limits of the Order (*l*).

The civil and criminal jurisdiction is generally exercisable in conformity with English law and procedure (*m*). The Courts have

(*b*) Pacific Order in Council, 1893, art. 5. But crimes committed by persons, subject to the Order, against natives or foreigners are punishable as if the latter were British subjects (art. 23). As to suits by or against foreigners, see art. 109.

(*c*) *Ibid.*, art. 7 (1).

(*d*) *Ibid.*, art. 7 (2).

(*e*) *Ibid.*, art. 7 (5).

(*f*) *Ibid.*, art. 7 (6). As to the Deputy Commissioner, see art. 9.

B.C.L.

(*g*) *Ibid.*, art. 8 (1). See *supra*, p. 298.

(*h*) *Ibid.*, art. 12. This Court has the jurisdiction of the English Courts in bankruptcy (art. 36), probate (arts. 38—46), divorce (art. 47; but the Deputy-Commissioner has no jurisdiction), and lunacy (art. 48). It is also a Colonial Court of Admiralty (art. 37).

(*i*) *Ibid.*, art. 14 (1) (6).

(*k*) *Ibid.*, art. 14 (2).

(*l*) *Ibid.*, art. 15. See *supra*, p. 293.

(*m*) *Ibid.*, arts. 20, 21.



power to re-hear any civil matter, and to review their judgments in civil cases (*n*). The High Commissioner may, on the application of any party to a civil proceeding before a Deputy Commissioner, order a re-hearing before himself and the Deputy Commissioner or any other Deputy Commissioner (*o*). In the event of a difference of opinion on the re-hearing between the High Commissioner and the Deputy Commissioner, the opinion of the former is to prevail (*p*).

Provision is made for the review of criminal sentences by the High Commissioner (who has also powers of remission, and by whom sentences of death must be confirmed), and by the Court of Appeal (*q*). In civil matters, an appeal lies to the Court of Appeal, i.e., the Supreme Court of Fiji, by leave of the Court, or of the Court of Appeal; thence to the Privy Council on the same conditions as from any decision of the Supreme Court of Fiji in the exercise of its ordinary jurisdiction (*r*).

**New Hebrides.**—By a convention made in 1887 a Joint Naval Commission of British and French Officers was established to maintain order in the New Hebrides (*s*). The islands were included in the Pacific Order in Council, 1893. By a Convention, dated October 20th, 1906 (*t*), the islands are placed under dual control of High Commissioners appointed by the French and English Governments. The High Commissioners have power to issue jointly regulations for the good government of the group (*u*). A joint Court shall be established consisting of three judges. Each of the two Governments shall appoint one and the King of Spain the third (*x*). In criminal cases the Court has the assistance of four non-native assessors who have a vote in deciding the question of guilt, but a consultative voice only in fixing the sentence (*y*). The Court has jurisdiction in civil (including commercial) cases: (a) over all suits respecting land in the group; (b) over suits of every kind between natives and non-natives; (c) in police and criminal cases and over every offence or crime committed by natives against non-natives (*z*). Litigants have the choice between the legal systems of the two

(*n*) Pacific Order in Council, 1893, 392.  
art. 26.

(*o*) *Ibid.*, art. 27 (1).

(*p*) *Ibid.*, art. 27 (2)

(*q*) *Ibid.*, arts. 80, 81.

(*r*) *Ibid.*, art. 88. See *supra*, p. 298.

(*s*) Hertslet, vol. xvii., 1164, xviii.,

(*t*) Parliamentary Paper, Cd. 3300.

(*u*) Art. vii

(*x*) Art. x.

(*y*) Art. xi.

(*z*) Art. xii.

Powers (a), and the proceedings may be in either French or English (b). Disputes relating to land are specially regulated by the Convention (c). The procedure when English law is applied in civil (including commercial) cases corresponds to that of the county courts; in police cases to that of the Courts of summary jurisdiction, and in criminal cases to that of the Courts of quarter sessions in England (d). In suits between natives the Courts shall decide according to substantial justice with the minimum procedure, respecting as far as possible the native customs and general principles of law (e). Courts for suits between non-natives are to be maintained according to the legal systems of the two Governments, subject to the reservations laid down in the Convention (f).

(a) Art. i.

(b) Art. xviii.

(c) Arts. xxii.—xxvii.

(d) Art. xiv.

(e) Art. xxi.

(f) Art. xx.

## PART III.

---

### APPEALS TO THE PRIVY COUNCIL.

**Right of Appeal to the Crown.**—An appeal lies to the King in Council from the highest civil Courts in his dominions whether Courts of error or not (*a*), but this is said not to be as of right except from a final and definitive judgment. The King, by virtue of his prerogative, has the right to review any decision of any Court in his transmarine dominions, criminal or civil. This prerogative right may be abandoned or restricted by the Crown with or in pursuance of the sanction of the Legislature, but such abandonment or restriction must be clearly expressed in the instrument alleged to contain it (*b*).

The appeal to his Majesty in Council seems coeval with the settlement of the Colonies, and the establishment of their judicature.

The earlier Colonies were for a long period treated by the Kings of England as part of their own demesnes, as their exclusive property, and not as subject to the jurisdiction of the State. The territories in North America were granted to be held, some as part of the manor of East Greenwich in Kent, others as of the Castle of Windsor, and others of Hampton Court (*c*).

At the time of their settlement there was no precedent of a judicatory besides those within the realm, except in the cases of Guernsey and Jersey.

The Order in Council dated October 9th, 1580, granting a right of appeal to the inhabitants of Guernsey, and a letter of the Council in 1605 fixing the appealable value, have been the basis of the procedure regulating appeals from the transmarine possessions of the Empire to the Sovereign in Council (*d*).

**Instructions.**—In the several Colonies, except those of Demerara,

(*a*) 7 & 8 Vict. c. 69, s. 1.

(*c*) See "Charters of the Old English Colonies," by S. Lucas (1850).

(*b*) Journ. of Comp. Leg., vol. i., N. S. 345.

(*d*) Safford and *v.* Wheeler, "Privy

Berbice (now British Guiana), Ceylon, the Cape of Good Hope, St. Lucia, the Mauritius, and those Settlements in which the Courts of Judicature were constituted by Charters or Orders in Council, the Governors were by their instructions, directed to allow appeals to the King in Council, *e.g.*, in Jamaica.

**Orders in Council.**—The appeal from the several Courts of Demerara and Berbice (now British Guiana), Trinidad, and St. Lucia, was and still is immediate to the King in Council. It is regulated by an Order in Council of June 20th, 1831, which follows the lines of an Order in Council of April 13th, 1831, giving an appeal from the Cour d'Appel of Mauritius.

**Charters.**—The liberty to appeal from the Supreme Court of the Cape of Good Hope under the Charter of May 4th, 1832, and from the Supreme Court of Judicature of the Island of Ceylon under the Charter of February 18th, 1833, is given in the same terms.

The Charters of Gibraltar, Sierra Leone, and other possessions contained similar provisions, which have been generally followed in granting the right of appeal to the Crown with slight variations as to the conditions (*e*).

The instructions by which the Governor of a Colony was restrained from admitting appeals to the King in Council, except in cases where the sum or matter in dispute was of a certain amount, were considered as restraints on the Governor alone, and not as precluding his Majesty from entertaining appeals in cases of any value where he should think fit (*f*).

In the Order in Council and in the Charters of Justice there is an express reservation of his Majesty's prerogative to admit appeals to his Majesty upon such terms as to his Majesty should seem fit.

This right of appeal is subject to the conditions stated in the Instructions, Orders in Council and Charters of Justice, as the case may be, and set out in the Tables of Conditions of Appeal below, the usual ones being that the appeal must be entered within a year and a day, though this is not imperative (*ff*); that leave to appeal must be

Council Practice" (1901), p. 247. There is an admirable and concise historical description of the appellate jurisdiction of the Privy Council in Part III., chap. i., pp. 699 *et seq.*

(*e*) For full particulars see Table of Appeals, *infra*, *sub tit.*

(*f*) It was stated in an opinion of the Attorney-General Northey, that such appeals had been often allowed by his Majesty: 2 Chalm. Opin. 177.

(*ff*) See *Grieve v. Tusker* [1906] A. C. 132.

obtained from the Court giving the decision within a certain time, the value of the matter in dispute must be a fixed sum, and the appellant must give security for costs.

Under circumstances in which no right of appeal from the decision of such a Court has been expressly granted by the Crown in one of the foregoing ways, petition may be made to the King in Council for special leave to appeal (*g*), which will be granted in civil cases of substantial general or constitutional importance.

With regard to criminal cases, the King in Council will not review or interfere with the course of criminal proceedings in any such Court unless it is shown that by a disregard of the forms of legal process, or by some violation of the principles of natural justice, or otherwise, substantial and grave injustice has been done (*h*).

**Constitution of the Judicial Committee.**—Before 1833 appeals to the King in Council were heard by committees specially appointed, usually in the legal vacations so as to enable the judges to attend (*i*).

The Judicial Committee of the Privy Council was constituted by an Act passed in 1833, since amended on several occasions; and it now consists of the President of the Council, the Lord Keeper or First Commissioner of the Great Seal of Great Britain, and all members of the Council who have held those offices; two other persons being Privy Councillors appointed under the sign manual (*k*), one or two members of the Council who have been judges in the East Indies or in the King's dominions beyond the seas appointed to attend the sittings of the Committee (*l*); four Lords of Appeal in ordinary if members of the Council (*m*); the present and past Lords Justices of Appeal who are members of the Council (*n*); members of the Council who held or have held high judicial office (*o*); and any member of the Council being or having been Chief Justice or Judge

(*g*) Journ. of Comp. Leg., vol. i., N. S., p. 346.

(*h*) Re A. M. Dillet (1887), 12 App. Cas. 467; Ex parte Carew [1897] A. C. 719.

(*i*) Enc. of Laws of Eng., sub tit. Privy Council.

(*k*) 3 & 4 Will. IV. c. 41, s. 1.

(*l*) 3 & 4 Will. IV. c. 41, s. 30; 50 & 51 Vict. c. 70, s. 4.

(*m*) 39 & 40 Vict. c. 59, ss. 6—14.

(*n*) 44 & 45 Vict. c. 3.

(*o*) 50 & 51 Vict. c. 70, s. 3, as defined by s. 5 of the Appellate Jurisdiction Act, 1876, s. 25. These comprise the Lord Chancellors of Great Britain and of Ireland, and the judges of the Superior Courts of Great Britain and Ireland, "Superior Courts" being defined as comprising the High Court of Justice and Court of Appeal in England, the Court of Session in Scotland, and the High Court of Justice in Ireland.

of the Supreme Court of the Dominion of Canada or Superior Court of any province of Canada, or Superior Court in the seven Australian Colonies, or of Cape Colony, or Natal, or other Superior Court in his Majesty's dominions named by his Majesty in Council (*p*). Three members form a quorum exclusive of the Lord President (*q*).

All appeals or complaints in the nature of appeals whatever, which either by virtue of that Act, or of any law, statute or custom, might be brought before his Majesty, or his Majesty in Council, are to be referred by his Majesty to the Judicial Committee, who, having heard the cause, make a report or recommendation thereon to his Majesty in Council, for his decision thereon, as theretofore, in the same manner and form as had been theretofore the custom with respect to matters referred by his Majesty to the whole of his Privy Council, or a Committee thereof, the nature of such report or recommendation being always stated in open Court (*r*).

No report or recommendation is to be made unless a majority of the members of the Committee present at the hearing concur in it (*s*). Nothing in the Act is to abridge the powers, jurisdiction, or authority of the Privy Council, except so far as they are expressly altered by the Act (*t*). The power is expressly reserved to his Majesty, if he think fit, to summon any other of the members of the Privy Council to attend the meetings of the Committee (*u*).

It is declared lawful for his Majesty to refer to the said Judicial Committee, for hearing or consideration, any such other matters whatsoever, as his Majesty should think fit (*x*).

The Committee are not entitled to put any limitation upon these words in any of the matters referred to them by the Court (*y*).

By the Act all necessary powers are conferred on the Committee for the purposes of the hearing, including that of requiring and enforcing the attendance of witnesses and the production of deeds,

(*p*) 58 & 59 Vict. c. 44, not exceeding five at one time.

(*q*) 14 & 15 Vict. c. 83, s. 16.

(*r*) 3 & 4 Will. IV., c. 41, s. 3.

(*s*) *Ibid.*, s. 5. The Report is, however, that of the Committee, and a dissentient minority is not allowed to express its opinion, and no member may reveal the fact of any difference of opinion among the members present

at the hearing: Order in Council, February 4th, 1878, confirming one of February 20th, 1827.

(*t*) 3 & 4 Will. IV. c. 41, s. 21.

(*u*) *Ibid.*, s. 5.

(*x*) *Ibid.*, s. 4.

(*y*) *In re Schlumberger*, 1853, 9 Moo. P. C. 12; Safford and Wheeler, "Privy Council Practice," part iii., ch. 4.

evidences, writings (z), and examining witnesses by word of mouth or deposition (a), and punishing contempt, compelling appearance, and enforcing its judgments and orders (b). On the recommendation of the Committee his Majesty may remit the matter which is the subject of appeal to the Court from whose decision the appeal is brought and direct a rehearing (c), and the Committee may direct issues to be tried in any Court in any of his Majesty's dominions or in a common law Court in England, and give all proper directions for such trial (d), and direct a new trial (e). The Orders of his Majesty in Council, made in pursuance of any recommendation of the Committee in any matter of appeal from the order or judgment of a Court or Judge, are enrolled and are open to inspection (f); and they are carried into effect as directed by his Majesty in Council on the recommendation of the Committee, who may by order direct that the Court of Justice from whom the appeal is brought, shall have the same powers of carrying into effect such Orders as are possessed by his Majesty in Council (g).

(z) 3 & 4 Will. IV. c. 41, s. 19.

(a) *Ibid.*, ss. 7—8.

(b) *Ibid.*, s. 28.

(c) *Ibid.*, s. 8.

(d) *Ibid.*, ss. 10—12.

(e) *Ibid.*, s. 13.

(f) *Ibid.* s. 16.

(g) *Ibid.* s. 21. For powers and

duties of the Registrar, see sects. 7, 17.

For details of the practice and procedure on appeals to the Privy Council, see Safford and Wheeler, "Privy Council Practice" (1901); Macqueen's "Appellate Jurisdiction"; and "Encycl. of Laws of Eng., tit. Privy Council."

**CONDITIONS OF APPEAL TO THE PRIVY COUNCIL  
FROM BRITISH COURTS OF JUSTICE OUT-  
SIDE THE UNITED KINGDOM.**



CONDITIONS OF APPEAL TO THE PRIVY COUNCIL FROM BRITISH COURTS OF JUSTICE OUTSIDE THE UNITED KINGDOM.

Colony, Possession, &c.	Authority under which appeals are tendered (a).	Appealable amount (b).	Limit of time within which leave to appeal must be taken.	Security required.
<p><b>ADEN.</b></p> <p><i>Remarks.</i>—Aden includes the settlement of Aden, the villages of Shaikh Othman, Imad, and Hiswa, the Island of Perim, and Little Aden. (See Aden Laws Regulation, II. of 1891 (c)). It is in British India, and is a Scheduled District of the Bombay Presidency under pt. 2 of Sch. I. to the Indian Scheduled Districts Act, xiv. of 1874. The administration of civil and criminal justice by the Court of the Resident is provided for by Act ii. of 1864. No appeal lies from any original, appellate, or revisional decision of the Resident to any Court in British India. As the highest local Court of Appeal, his Court is, therefore, a High Court within the definition in s. 3 (24) of the Indian General Clauses Act, x. of 1897; and an appeal lies to the Privy Council from the Resident. His Court is, however, subject to the superintendence of the High Court at Bombay. (See Municipal Officer, Aden v. Hajjee Ismail <i>et al.</i>, (1905) L. R. 33 Ind. Ap. 38; see also, as regards civil matters, ss. 8 to 12, and as regards criminal matters, ss. 21 and 28 to 31 of Act ii. of 1864.) An appeal lies from the High Court to the Privy Council in respect of orders made in exercise of the superintending jurisdiction. As to the state of the law in Perim before the enactment of Regulation II. of 1891, see <i>Queen-Empress v. Mangal Tekchand</i>, (1885) L. R. 10 Bom. 258, 263, 274, and the notification cancelled by s. 5 of the Regulation.</p>	<p>For conditions of appeal, see <b>BRITISH INDIA.</b></p>			

**ADMIRALTY (COLONIAL COURTS OF).** See 53 & 54 Vict. c. 27, ss. 6, 7; Rules of December 11th, 1865 (Stat. R. & O. Rev., 1901, vol. vi., "Judicial Committee," p. 38); and Order in Council of

July 18th, 1898 (Stat. R. & O. Rev., 1904, vol. ix., "Navy," pp. 275—415).

#### AFRICA. (*Continued*).

*Remarks.*—The Africa Order in Council, 1889 (Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," pp. 13, 22), provides for the constitution of "local jurisdictions" on the Continent of Africa. (See *supra*, p. 333.) The Order in Council provides for the constitution of such "local jurisdictions," and the regulation of appeals from them, by Secretary of State's Instructions. (See Hertslet xviii. l. and xix. l.) Journ. of Comp. Leg. N. S. vol. i., 360. Safford and Wheeler "Privy Council Practice," pp. 610 *et seq.* Under the Africa Order in Council, 1889, art. 82 (*ubi cit. supra*, p. 22), appeals may be taken to the Privy Council from "local jurisdictions" constituted under this Order, on the conditions on which appeals lie from the prescribed Courts of those jurisdictions respectively. The Order has been repealed as regards the British Central Africa Protectorate (*q.v.*), the East Africa Protectorate (*q.v.*), the Uganda Protectorate (*q.v.*), and Northern and Southern Nigeria (*q.v.*). (See *supra*, p. 333.) See also Cape of Good Hope (p. 304); Gold Coast Colony (p. 264); Barotseland, North Western Rhodesia, and Natal. With regard to appeals from the different divisions of the Continent, see the respective titles in this table.

AGRA. See UNITED PROVINCES OF AGRA AND OUDH.

AHMEDNAGAR. See BOMBAY.

AJMER-MERWARA.

*Remarks.*—The Chief Commissionership of For conditions of ap-

(a) As to the general statutory authority for the admission and hearing of appeals, see the Judicial Committee Act, 1833 (3 & 4 Will. IV. c. 41), s. 3, and the Judicial Committee Act, 1844 (7 & 8 Vict. c. 69), s. 1. If a Court, administering justice on the King's behalf, makes an order, judicial in its nature, by which some one is unjustly and injuriously affected, the person aggrieved is not precluded from applying to the King in Council to redress his wrong merely by the fact that he is not the King's subject: *Soni Hencland v. Azam Sakarial and The Taluka of Kotla Sangani v. The State of Gondal* (L. R. 33 Ind. App. 1).

(b) In ascertaining the appealable amount, the judgment is to be looked at as it affects the interests of the party who is prejudiced by it, and who seeks to relieve himself from it by appeal (*Macfarlane v. Leclaire* (1862), 15 Moo. P. C. 181). The measure of value for determining the right of appeal is therefore—(i.) in the case of a plaintiff the amount for which the defendant has successfully resisted a decree (*Mohideen Hadjar v. Pitchay* (1893), App. Cas. 1097; (ii.) in the case of a defendant the amount which the plaintiff has recovered (*Allan v. Pratt* (1888), 13 App. Cas. 780). See also Colonial Government v. Laborie (1902), Dec. Sup. Ct. Mauritius, 1902, p. 71.

(c) The Governor-General of India in Council has power under the Government of India Act, 1870 (33 & 34 Vict. c. 3), s. 1, to make Regulations for certain parts of British India, to which this section is, by Resolution, made applicable. Any territory to which s. 1 is thus applied becomes a scheduled district under the Scheduled Districts Act of 1874.

## CONDITIONS OF APPEAL TO THE PRIVY COUNCIL (Continued)—

Colony, Possession, &c.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
<p>Ajmer-Merwara in Rajputana is a part of British India, Ajmere having been ceded to the British Government in 1818, and Merwara subduced in 1821. It is a Scheduled District under pt. 9 of Sch. I. to the Indian Scheduled Districts Act, xiv. of 1874. The Governor-General's Agent in Rajputana is the Chief Commissioner of Ajmer-Merwara. The Court of the Chief Commissioner is the highest Civil Court of Appeal, and, therefore, a High Court within the definition in s. 3 (24) of the Indian General Clauses Act, x. of 1897. (See s. 23 of Regulation I. of 1877, Ajmer Coile, 1905.) The High Court at Allahabad is a Court of Reference and Revision in certain civil cases; and exercises original and appellate criminal jurisdiction over European British subjects. (See ss. 17, 23 and 38 of Regulation I. of 1877, and "Gazette of India," 1874, Part I., p. 484.) Appeals lie to the Privy Council from that High Court, and also from the Court of the Chief Commissioner, in respect of cases dealt with finally by it.</p>	<p>peal, see BRITISH INDIA.</p>			
<p>ALDERNEY. See GUERNSEY.</p> <p>ALLAHABAD. See UNITED PROVINCES OF AGRA AND OUDH.</p>				
<p>ANDAMANS AND NICOBARS.</p> <p><i>Remarks.</i>—The Chief Commissionership of the Andaman and Nicobar Islands, in the eastern part of the Bay of Bengal, is a Scheduled District of British India under pt. 8 of Sch. I. to the Indian Scheduled Districts Act, xiv. of 1874. The Court of the Chief Commissioner is the highest Court of Appeal in the Islands. (See, as to civil cases, Gazette of India, 1878, part I., p. 132; and, as to criminal cases, the Andaman</p>	<p>For conditions of appeal, see BRITISH INDIA.</p>			

and Nicobar Islands Regulation, III. of 1876, s. 13, as amended by Regulation I. of 1884.) There is no appeal to any higher Court in British India; but death sentences passed by the Chief Commissioner are subject to confirmation by the Governor-General of India in Council. Original and appellate criminal jurisdiction over European British subjects and persons charged with them is reserved to the High Court at Calcutta. (See "Gazette of India," 1878, Part I., p. 132.) The Indian Codes of Civil and Criminal Procedure are in force in the islands, with certain alterations, under the Andaman and Nicobar Regulation III. of 1876, as amended by Regulation I. of 1884. An appeal would apparently lie from the Court of the Chief Commissioner, from the Governor-General in Council, and from the High Court at Calcutta, to the Privy Council.

ANGUILLA. See LEEWARD ISLANDS.

ANGUL. See BENGAL.

ANTIGUA. See LEEWARD ISLANDS.

ARAKAN HILLS. See BURMA.

ASHANTI. See Ashanti Order in Council, 1901 (Order in Council of September 26th, 1901: Stat. R. & O. Rev., 1904, vol. I., "Ashanti," p. 1).

ASSAM. See EASTERN BENGAL AND ASSAM.

AUSTRALIA: COMMONWEALTH.

*Remarks.*—The Commonwealth of Australia Constitution Act, 1900 (63 & 64 Vict. c. 12), enabled a Federal Court to be constituted (see *supra*, p. 283) for Australia (New South Wales, Victoria, South Australia, Queensland, Tasmania, Western Australia, and any colonies or territories subsequently admitted to the Commonwealth). This is called the High Court of Australia. No appeal from it is to lie to the Privy Council upon any question, however arising, as to the limits *inter se* of the constitutional powers of the Commonwealth and those of any State or as to the limits *inter se* of the constitu-

CONDITIONS OF APPEAL TO THE PRIVY COUNCIL (*Continued*)—

Colony, Possession, &c.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked	Security required.
<p>tional powers of two or more States unless the Court certifies for an appeal. Subject to this limitation, the prerogative right of the Crown to entertain appeals as of grace is preserved. But Parliament may make laws limiting the matters in which leave may be asked (s. 74). By an Australian Act, the Judiciary Act, 1903, the Supreme Courts of the several States were invested with federal jurisdiction in certain matters (s. 39), and it was enacted that the only appeal from such Courts in the exercise of their federal jurisdiction was to lie to the High Court of Australia; but the Act is not retrospective, and the right of appeal in suits pending when it was passed is not taken away: Colonial Sugar Refining Co., Ltd. v. Irving [1905] A. C. 369. Subject to this limitation (assuming it to be within the competence of the Federal Legislature to enact s. 39 of the Judiciary Act, 1903, see <i>supra</i>, p. 283) appeals lie from the State Courts to the Privy Council as before federation, alternatively to appeals to the High Court of Australia: See Victorian Railway Commissioners v. Brown [1906] A. C. 381. It is necessary, therefore, to preserve the former conditions of appeal from the various States in this table. By Letters Patent of March 18th, 1902 (brought into force on September 1st, 1906, by a Colonial Proclamation), British New Guinea was admitted to the Commonwealth as the Territory of Papua, and is now regulated by an Act of the Commonwealth—the Papua Act of 1905. Appeal lies from the Central Court of the territory, "with such exceptions and subject to such regulations as are prescribed by Ordinance," to the High Court of Australia, whose judgment "shall be final and conclusive" (Papua Act, 1905, s. 43).</p>				

<p>AUSTRALIA : STATES.</p> <p>(1) NEW SOUTH WALES.</p> <p><i>Remarks</i>.—By Charter of Justice, October 13th, 1823 (Clark, "Colonial Law," pp. 627, 636), the appealable value was £2,000.</p>	<p>Order in Council of November 13th, 1850 (Stat. R. and O. Rev., 1904, vol. vi., "Judicial Committee," p. 64).</p>	<p>A sum exceeding, or a claim to property or civil right amounting to, £500.</p>	<p>Fourteen days from the date of the judgment appealed against.</p>	<p>Regulated by the Court below, and to be found within three months of the petition for leave to appeal. Execution may be suspended or carried out, respondent giving good and sufficient security. <i>Pro forma</i> judgment sufficient for purpose of appeal where Judges equally divided.</p>
<p>(2) QUEENSLAND.</p> <p><i>Remarks</i>.—By Constitution Act, 1867 (31 Vict., No. 38), s. 24, appeal lies to Privy Council as to vacancy in Legislative Council.</p>	<p>Order in Council of June 30th, 1860 (Stat. R. and O. Rev., 1904, vol. vi., "Judicial Committee," p. 77); 24 &amp; 25 Vict. c. 44.</p>	<p>A sum exceeding, or a claim to property or civil right amounting to, £500.</p>	<p>Fourteen days from the date of the judgment appealed against.</p>	<p>Not exceeding £500. Execution may be suspended or carried out, respondent giving good and sufficient security. <i>Pro forma</i> judgment sufficient for purpose of appeal where Judges equally divided.</p>
<p>(3) SOUTH AUSTRALIA.</p> <p><i>Remarks</i>.—See "Jour. Comp. Leg.," vol. ii., p. 279.</p>	<p>Order in Council of June 9th, 1860 (Stat. R. and O. Rev., 1904, vol. vi., "Judicial Committee," p. 85).</p>	<p>A sum exceeding, or a claim to property or civil right amounting to, £500.</p>	<p>Within fourteen days after date of judgment.</p>	<p>Not exceeding £500. Execution may be suspended or carried out, respondent giving good and sufficient security. <i>Pro forma</i> judgment sufficient for purpose of appeal where Judges equally divided.</p>
<p>(4) TASMANIA.</p> <p><i>Remarks</i>.—Stat. R. &amp; O. Rev., 1904, vol. i., Australia, Commonwealth of, p. 50 for Charter of Justice.</p>	<p>Charter of Justice, March 4th, 1831.</p>	<p>From judgment for sum above, or involving directly or indirectly claim to property or civil right of value of, £1,000.</p>	<p>Fourteen days.</p>	<p>Appellant's security regulated by Court below; within three months. Execution may be carried out or suspended, respondent or appellant giving security as case may be.</p>
<p>(5) VICTORIA.</p> <p><i>Remarks</i>.—As to the relation between the Order in Council and the Act, see <i>Ex parte Rolfe</i> (1863), 2 W. &amp; W. L. E. &amp; M. 51. See also <i>Pearson v. Russell</i> (1889), 15 V. L. R. 89; Commercial Bank of Australia v. McCaskill (1897), 23 V. L. R. 313; Alliance Contracting Co., Ltd. v. Russell (1898), 23 V. L. R. 545.</p>	<p>Order in Council of June 9th, 1860 (Stat. R. and O. Rev., 1904, vol. vi., "Judicial Committee," p. 90); and Supreme Court Act, 1890, s. 231.</p>	<p>A sum exceeding, or a claim to property or civil right amounting to, £500.</p> <p>Under the Supreme Court Act, 1890, s. 231, the appealable amount is £1,000.</p>	<p>Within fourteen days after date of judgment. Within thirty days.</p>	<p>Not exceeding £500. Execution may be suspended or carried out, respondent giving good and sufficient security. <i>Pro forma</i> judgment sufficient for purpose of appeal where Judges equally divided.</p>

## CONDITIONS OF APPEAL TO THE PRIVY COUNCIL, (Continued)—

Colony, Possession, &c.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
(6) WESTERN AUSTRALIA. See AUSTRALIA: COMMONWEALTH. <i>Remarks</i> .—As to appeals to Supreme Court, see Supreme Court Acts, 1880 (44 Vict., No. 10), 1886 (50 Vict., No. 28), and 1903 (3 Edw. VII., No. 10).	Order in Council of October 11th, 1861 (Stat. R. and O. Rev., 1904, vol. vi., "Judicial Committee," p. 93); and 24 Vict., No. 15, s. 29.	A sum exceeding, or a claim to property or civil right amounting to, £500.	Within fourteen days after date of judgment.	Within twenty-eight days. Execution stayed if notice of appeal given and security perfected.
PAPUA: TERRITORY. See <i>supra</i> . BAHAMA ISLANDS. <i>Remarks</i> .—Cp., for old laws, "Bahama Laws," 2 Vict., No. 9, appeal from Governor in Council; 10 Vict., No. 12, appeal from the Courts of Chancery and ordinary; 22 Vict., No. 24, s. 51, and 23 Vict., No. 20, appeal from all sentences and decisions made by full Divorce Court. BALUCHISTAN. See BRITISH BALUCHISTAN; and INDIA outside BRITISH INDIA. BANGALORE. See INDIA outside BRITISH INDIA. BARNU. See N.-W. FRONTIER PROVINCE. BARBADOS. See WINDWARD ISLANDS. BAROTZILAND—NORTH-WESTERN RHODESIA. See Order in Council of November 28th, 1899, amended by Order in Council, December 16th, 1902 (Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 52). The High Commissioner may make provision for any matters relating to the administration of justice by Proclamation (art. 8). Appeal under Africa Order in Council, see AFRICA (CONTINENT). BASUTOLAND. <i>Remarks</i> .—Disannexed from Cape Colony (see p. 304, Imp. Act, 7 & 8 Vict. c. 69, and Procl. May 29th, 1884) by Cape Act, No. 34	Supreme Court Act, 1896.	Final judgment, or order on claim or question of value of, £500. Appeal by leave where amount less than £500.	No time prescribed.	Regulated by Court below, not exceeding £500: within one month. Execution to be suspended on appellant giving security to satisfaction of Court.

of 1883, brought into operation by Proclamation. March 18th, 1884. An Order in Council of February 2nd, 1884 (Stat. R. & O. Rev., 1904, vol. i., "Basutoland," p. 1), provides for the exercise of all legislative authority by the High Commissioner by Proclamation. Resident Commissioner has power to make rules as to appeals. Cape law to be applied as far as possible (Proclamation, May 29th, 1884). (Safford and Wheeler, "Privy Council Practice," p. 273.)  
**BECHUANALAND PROTECTORATE.** See **SOUTH AFRICA : BRITISH BECHUANALAND.**

**BEHAR.** See **BENGAL.**

**BERAR.** See **INDIA** outside **BRITISH INDIA.**

**BENGAL.**

*Remarks.*—As reconstituted in 1905, the Presidency of Bengal comprises Bengal proper (except Eastern Bengal), Behar, Orissa, and the greater portion of the Sambalpur District, which are Non-scheduled Districts of British India, and the following tracts, which are Scheduled Districts under pt. 3 of Sch. I. to the Indian Scheduled Districts Act, xiv. of 1874 :—the Darjeeling District, the Sonthal Parganas, the Chota Nagpur Division, and the Angul District (including the Khondmals) in Orissa. The High Court at Fort William, Calcutta, has jurisdiction over both the Non-scheduled Districts and the Scheduled Districts, except that (1) in the Sonthal Parganas the Commissioner of Bhagulpur is the High Court for certain purposes (see the Sonthal Parganas Justice Regulation, V. of 1893, ss. 4, 10, 15, as amended by the Sonthal Parganas Justice and Laws Regulation, III. of 1899); and (2) in the Angul District, the Superintendent of the Orissa Tributary Mahals is the High Court for all purposes except in reference to criminal proceedings against European British subjects or persons jointly charged with such subjects. In reference to such proceedings the High Court at Fort William has jurisdiction under the notification of the Government of India referred to under "BRITISH INDIA." (See the Angul

For conditions of appeal, see **BRITISH INDIA.**



CONDITIONS OF APPEAL TO THE PRIVY COUNCIL (*Continued*)—

Colony, Possession, &c.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
District Regulation, I. of 1894, s. 10.) An appeal lies to the Privy Council from each of the High Courts referred to.  BERMUDA.	Court Act, 1814, s. 9. Act 1836, No. 15 (appeal only from final decree or interlocutory decree having force or effect of final decree). Cp. also Mandamus Act, 1868, s. 11; Court of Chancery Act, 1876, ss. 13, 14.	From Court of Errors, more than £500; from Court of General Assize in Chancery, more than £300.	In the Court of Errors, twenty days or fourteen days (Mandamus Act); in the Court of General Assize in Chancery, fourteen days.	Security in Court of Errors double the amount in dispute; in Court of General Assize in Chancery, good and sufficient security within thirty days.
BOLAN. See INDIA outside BRITISH INDIA.  BOMBAY. <i>Remarks</i> .—The Presidency of Bombay in British India comprises the Non-scheduled Districts of the Presidency proper, and the Scheduled Districts of Sindh, Aden, and the villages belonging to certain Mcchwassi Chiefs. (See pt. 2 of Sch. I. to the Indian Scheduled Districts Act, xiv. of 1874, so far as it is unrepealed by s. 4 of Act vii. of 1885.) The High Court at Bombay, as constituted by Letters Patent under the Indian High Courts Act, 1861 (24 & 25 Vict. c. 104), has jurisdiction over the Non-scheduled Districts, and, in criminal matters, over European British subjects in Sindh and Aden, also over His Majesty's Court at Zanzibar (see ZANZIBAR), appellate jurisdiction over MUSCAT and PERSIAN COAST and ISLANDS. An appeal lies to the Privy Council from the High Court. In suits against certain persons of rank in the Non-scheduled	For conditions of appeal, see BRITISH INDIA.			

Districts of Ahmednagar, Dharwar, Khandesh, Poona, and Satara, and in certain villages in other districts, exclusive jurisdiction is vested in an Agent of the Bombay Government specially appointed for hearing such suits, with an appeal in certain cases to the Governor in Council of Bombay as a special Civil Court of reference and appeal, and in others to the Bombay High Court, and a further appeal is expressly given in some cases to the Privy Council. (See ss. 3, 4 and 5 of Bombay Regulation XXIX. of 1827, and Regulations VII. of 1830, I. of 1831, and XVI. of 1831, Act xix. of 1835, and Bombay Acts iii. of 1863 and xiv. of 1866—Bombay Code, 3 vols., 1894—96.) A further appeal, even where not so given in any case, would lie to the Privy Council from the High Court, and also from the Governor in Council when dealing as the highest Court of Appeal in British India with such cases. (As to appeals from the Scheduled Districts, see ADEN, MEHWASSI VILLAGES, and SINDH.)

**BRITISH BALUCHISTAN.**

*Remarks.*—British Baluchistan is a Scheduled District of British India under the concluding portion of the third paragraph of s. 1 of the Indian Scheduled Districts Act, xiv. of 1874, and includes the districts of Pishin, Shararud, Kach, Kavas, Harnai, Sibi, and Thal-Chotiali, which are administered by the Governor-General's Agent in Baluchistan as Chief Commissioner. The law relating to the administration of civil justice is Regulation IX. of 1896. (See Baluchistan Code, 1900.) The Court of the Judicial Commissioner is the High Court for the purposes of all enactments relating to civil jurisdiction, except the Indian Divorce Act (iv. of 1869), under which the Chief Court of the Punjab is the High Court. (See s. 7 of Regulation IX. of 1896.) The law relating to criminal justice is Regulation VIII. of 1896. In reference to proceedings against European British subjects and persons jointly tried with them the Chief Court of the Punjab is the High

For conditions of appeal, see **BRITISH INDIA.**

CONDITIONS OF APPEAL TO THE PRIVY COUNCIL (*Continued*)—

Colony, Possession, &c.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
<p>Court. In reference to proceedings against other persons the Judicial Commissioner is the High Court. Sentences of death passed by him are, however, subject to confirmation by the Chief Commissioner, who, in such cases, exercises the powers of a High Court. It would appear, therefore, that in the cases respectively dealt with finally by them an appeal lies from the Judicial Commissioner, the Chief Commissioner, and the Punjab Chief Court, to the Privy Council.</p> <p>BRITISH BECHUANALAND.</p> <p><i>Remarks.</i>—Same conditions as CAPE OF GOOD HOPE. Arts. 50, 51, and 52 of Cape Charter (embodying conditions of appeal) apply to it; Proc. No. 9, B. B., 1886. British Bechuanaland was annexed to Cape Colony by Act No. 41 of 1895 (November 9th, 1895). See Reg. v. Jameson [1896] 2 Q. B. 425.</p> <p>BRITISH CENTRAL AFRICA PROTECTORATE.</p> <p><i>Remarks.</i>—Appeal lies from High Court constituted by Order in Council of August 11th, 1902 (<i>ibid.</i>, p. 40), through Court of Appeal for EASTERN AFRICA (q.v.).</p> <p>BRITISH COLUMBIA. See CANADA.</p> <p>BRITISH GUIANA.</p>	<p>Order in Council of August 11th, 1902 (Stat. R. &amp; O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 49).</p> <p>Order in Council of June 20th, 1831 (arts. 25—27) (Stat. R. and O. Rev., 1904, vol. vi., "Judicial Committee," p. 18).</p>	<p>Sum or matter of greater amount or value than, or involving directly or indirectly title to property or to civil right amounting to or of value of £500.</p>	<p>Fourteen days.</p>	<p>Judgment to be carried into execution if respondent give security for immediate performance of judgment of Privy Council, unless appellant satisfy Court that "real and substantial justice" requires a stay and finds</p>

<p>security; appellant's security to be not more than £300, and to be found within three months from date of petition for leave to appeal. Petition lies to Privy Council against order as to security. Where subject-matter is immovable property or stock, &amp;c., thereon, and judgment does not charge, affect, or relate to actual occupation no security is to be demanded from either party; where judgment does so charge, &amp;c., no greater security than necessary to preserve its integrity.</p>	<p>Execution stayed on notice of appeal if security to amount regulated by Court given to prosecute appeal within three months.</p>	<p>Any judgment, &amp;c., of Supreme Court (Ordinance 14 of 1879, s. 59), not decision on appeal from summary jurisdiction (<i>ibid.</i>, s. 60), or order made by Court in exercise of disciplinary jurisdiction "Consol. Laws," p. 26; and see <i>ibid.</i>, p. 836, c. 106, s. 24, appeal in regard to decision as to title of registered land). Under British Honduras (Court of Appeal) Act, 1881 (44 &amp; 45 Vict. c. 36), and Order in Council of November 30th, 1882, an appeal lies from Supreme Court of British Honduras to Supreme Court of Jamaica from any judgment as to a sum or claim to civil right of or above value of £50.</p>	<p>Under ss. 594 and 596 of the Indian Code of Civil Procedure.</p>
<p>Eight clear days.</p>	<p>Under Art. 177 of Sch. II. to</p>	<p>As to the security and deposit required on grant of a cer-</p>	

BRITISH HONDURAS.

"Consolidated Laws of British Honduras," edit. 1887, pp. 26-28, 836. British Honduras (Court of Appeal) Act, 1881 (Imp.) (44 & 45 Vict. c. 36). Order in Council of November 30th, 1882. Stat. R. and O. Rev., 1904, vol. 1, "British Honduras," p. 4), Ordinance No. 14, 1879.

BRITISH INDIA.

Remarks.—British India comprises all the

3 & 4 Will. IV. c. 41; 7 & 8 Vict. c. 69;

CONDITIONS OF APPEAL TO THE PRIVY COUNCIL (*Continued*)—

Colony, Possession, &c.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
<p>dominions of the Crown which are for the time being governed by His Majesty through the Governor-General of India or any subordinate officer; and does not include the territories of Indian Princes and Chiefs under the suzerainty of the Crown. (Cf. the Interpretation Act, 1889 (52 &amp; 53 Vict. c. 63), s. 18 (4) and (5).) The territories included in British India are (1) those territories which were formerly in the possession and under the government of the East India Company in trust for the Crown, and became vested in the Crown under the Government of India Act, 1858 (21 &amp; 22 Vict. c. 106), and (2) such territories as may have since or may hereafter become so vested under that Act. These territories are termed "India" in the Act; but, in subsequent Acts, they are termed "British India." (See, for instance, the Indian General Clauses Act i. of 1868, s. 2 (8), since repealed but re-enacted in Act x. of 1897; the Indian Penal Code (Act xiv of 1860), s. 15; the first Criminal Procedure Code (Act xxv. of 1861), s. 3; which further show that "India" excludes the Settlement of Prince of Wales' Island, Singapore and Malacca, which were separated by the Straits Settlement Act, 1886 (29 &amp; 30 Vict. c. 115). An appeal lies to the Privy Council, both in civil and criminal cases, from the four chartered High Courts constituted by Letters Patent under the Indian High Courts Act, 1861 (24 &amp; 25 Vict. c. 104), at Fort William, in Bengal, and at Madras, Bombay, and Allahabad. Original and appellate criminal jurisdiction over European British subjects in various outlying provinces and places in British India is exercised by these Courts under a notification published in the</p>	<p>Letters Patent under s. 1 of the Indian High Courts Act, 1861 (24 &amp; 25 Vict. c. 104), for the High Courts of Judicature at Fort William, in Bengal, and at Madras and Bombay, clauses 39-42; and under s. 16 of that Act for the High Court of Judicature for the North Western Provinces (now a part of the United Provinces of Agra and Oudh), at Allahabad, clauses 30-33; the Indian Code of Civil Procedure (Act xiv. of 1882), ss. 594-598, 600 to 613 and 615, which apply to High Courts generally, as defined in Act x. of 1897, s. 3 (24), but do not apply to any matter of criminal or admiralty or vice-admiralty jurisdiction, or to appeals from orders or decrees of Prize Courts. As to the</p>	<p>cedure (Act xiv. of 1882), when an appeal is (a) from any final decree, judgment, or order passed on appeal by a High Court or any other Court of final appellate jurisdiction, or (b) from any final decree, judgment, or order passed by a High Court in the exercise of original civil jurisdiction, then, in each of these cases, the amount or value of the subject-matter of the suit in the Court of first instance must be Rs. 10,000 or upwards, and the amount or value of the matter in dispute on appeal to His Majesty in Council must be the same sum or upwards, or else the decree must involve, directly or indirectly, some claim or question to, or respecting, property of like amount or value. Where the decree appealed from affirms the decision of the Court immediately below the Court passing such decree, the appeal must involve some substantial question of law. As to this, see I. L. R. 2 Calc. 228. The foregoing provisions as to the appealable amount</p>	<p>the Indian Limitation Act (xv. of 1877) an application for the admission of an appeal to the Privy Council must be made within six months from the date of the decree. The application referred to in this article is apparently an application under s. 598 of the Code of Civil Procedure, to the Court, whose decree is complained of, for a certificate that, as regards amount or value and nature, the case fulfils the requirements of s. 596, or that it is otherwise fit for</p>	<p>tificate of the fitness of a case for appeal under the Code of Civil Procedure (Act xiv. of 1882), see ss. 602 and 612 of that Code. As to the ordering of further security or payment after the admission of the appeal, see ss. 605, 606. As to the refund of the balance of a deposit, see s. 607. As to the increase of security found, during the pendency of the appeal, to be inadequate, see s. 609.</p>

Gazette of India, 1874, Part I., p. 484 (a), the terms of which are repeated in several of the enactments relating to local Courts, subsequently passed. In districts not under the jurisdiction of the Chartered High Courts, being, as a rule, Scheduled Districts under the Scheduled Districts Act, xiv. of 1874, or districts which have been "de-regionalized," that is to say, exempted, wholly or partially, from the operation of the ordinary law, an appeal lies to the Privy Council from the highest Courts of Appeal for those districts, such Courts being, for purposes of appeal to the Privy Council, High Courts within the definition in the Indian General Clauses Act x. of 1897, s. 3 (24). (See also ADEN, AJMER-MERWARA, ANDAMANS and NICOBARS, BENGAL, BOMBAY, BRITISH BALUCHISTAN, BURMA, CENTRAL PROVINCES, COORG, EASTERN BENGAL and ASSAM, MADRAS, MANPUR, MEHWASSI VILLAGES, NORTH-WEST FRONTIER PROVINCE, PUNJAB, SINDH, and UNITED PROVINCES OF AGRA and OUDH.)

BRITISH NEW GUINEA. See AUSTRALIA : COMMONWEALTH.

*Remarks.*—The Order in Council of March 6th, 1902 (Stat. R. & O. Rev., 1904, vol. i., "Australia," p. 70), revoking Orders in Council of 1888 and 1891, was brought into force on September 1st, 1906, by Colonial Proclamation and British New Guinea admitted into the Commonwealth of Australia as the Territory of Papua.

BRITISH NORTH BORNEO.

*Remarks.*—Charter of Justice, *London Gazette*, November 8th, 1881, pp. 5448—53. No rules in Charter, but provision was made by art. 11 for issuing an Order in Council for exercise and

bar of certain appeals, see s. 597. As to the power of the High Courts to make Rules, consistent with the Code, see s. 612. The provisions of the Code of Civil Procedure do not bar the full and unqualified exercise of His Majesty's pleasure in receiving or rejecting appeals to His Majesty in Council, or otherwise howsoever, or interfere with any rules made by the Judicial Committee, and for the time being in force, for the presentation of appeals to His Majesty in Council, or their conduct before the Judicial Committee. (See s. 616.)

do not apply to a case which is certified under s. 600 as otherwise a fit one for appeal to His Majesty in Council.

appeal. As to the course of legislation with regard to appeals to the Privy Council, see *In re Sita Ram*, I. L. R. 15 All. 14, and Starling, "Indian Limitation Act, 1877," p. 344.

(c) See "General Acts" of the Government of India, 1891—1893, Ed. 1899, p. 519.

## CONDITIONS OF APPEAL TO THE PRIVY COUNCIL (Continued)—

Colony, Possession, &c.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
<p>regulation of Her Majesty's jurisdiction in Borneo. It is believed that an Order in Council under this article received the assent of the Queen in Council, but that it has not been found necessary to put it into force. The State of North Borneo is now a British Protectorate (see Agreements, May 12th, 1888, Hert. xviii., p. 225). See BRUNEI, SARAWAK.</p>				
<p><b>BRUNEI.</b>  <i>Remarks.</i>—By an Order in Council of November 22nd, 1890, provision was made for the establishment of British Consular Courts, and appeals to STRAITS SETTLEMENTS, and thence to Privy Council (Stat. R. &amp; O., 1890, p. 685); but this Order was never brought into force. Relations between BRUNEI and NORTH BORNEO are governed by Agreements of May 12th, 1888 (Hert. xviii., p. 225), and September 5th, 1888 (<i>ib.</i>, p. 227). The Order of 1890 was repealed by an Order in Council of January 11th, 1900 (Stat. R. &amp; O., 1900, p. 282), and is now replaced by the Brunei Order in Council, 1901 (Order in Council of July 24th, 1901, Stat. R. &amp; O. Rev., 1904, vol. v., "Foreign Jurisdiction, p. 189, at pp. 206—209). Appeal lies from the High Court, constituted by art. 7, through Supreme Court of STRAITS SETTLEMENTS (<i>q.v.</i>). No appeal in criminal cases except by special leave of Privy Council (art. 30).</p>				
<p><b>BURMA.</b>  <i>Remarks.</i>—The Province of Burma in British India comprises Lower Burma and Upper Burma, which includes the Shan States and the Chin Hills. The only portions of Lower Burma which are scheduled districts are the Arakan Hill tracts (see pt. 6 of Sch. I. to the Scheduled</p>	<p>For conditions of appeal, see <b>BRITISH INDIA.</b></p>			

Districts Act, xiv. of 1874). and the areas transferred from Upper Burma (see Act xiii. of 1898, s. 14 (2)). In the Arakan Hills, the Commissioner of the Division is the High Court in civil matters, subject to a power in the Chief Court of Lower Burma to call up appeals pending before him (see Regulation VIII. of 1874, ss. 2 (c), 76; Regulation IX. of 1874, s. 4, and Act vi. of 1900, Sch. I., pt. 2). In all other cases, civil and criminal, the Chief Court is the High Court for the whole of Lower Burma. It is also the principal civil and criminal Court of original jurisdiction for the town of Rangoon (see the Lower Burma Courts Act vi. of 1900, s. 8). An appeal lies to the Privy Council from the Chief Court; also from the Commissioner of Arakan in civil cases finally dealt with by him. Upper Burma (exclusive of the Shan States, but including the Chin Hills) is a Scheduled District under s. 1 of 33 Vict. c. 3 and the third paragraph of the Indian Scheduled Districts Act (xiv. of 1874). The civil judicial administration of Upper Burma is provided for by the Upper Burma Civil Courts Regulation, I. of 1896 (Burma Code, 1899). An appeal lies to the Privy Council from the Court of the Judicial Commissioner of Upper Burma, which has all the powers of a High Court not established under the Indian High Courts Act, 1861 (24 & 25 Vict. c. 104). In criminal matters the High Court in Upper Burma is the Judicial Commissioner, except in the Chin Hills, where the Lieut.-Governor is the High Court (see Regulation V. of 1896, s. 10), and in the Kachin Hills, where the Commissioner of the Division is the High Court (see Regulation I. of 1895, s. 8), and except in reference to criminal proceedings against European British subjects and persons jointly charged with them, wherein the Chief Court of Lower Burma is the High Court. By s. 10 (3) of the Burma Laws Act (XIII. of 1898), provision is made for defining the Shan States from time to time, and by s. 10 (2) those States are excluded from the operation of any Act not specially



CONDITIONS OF APPEAL TO THE PRIVY COUNCIL. (*Continued*)—

Colony, Possession, &c.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
<p>extended to them. By s. 11 the civil and criminal jurisdiction in each State is vested in its Chief, subject to conditions specified in the instrument recognising him as Chief. The Shan States Civil Justice Order of May 16th, 1900, confers civil jurisdiction also on the superintendents and assistant superintendents of the States. Criminal jurisdiction in cases in which the complainant or the accused is a European, or an American, or a British subject (not a native of a Shan State), is withdrawn from the Chiefs and vested in the superintendents and their assistants, with an appeal to the Lieutenant-Governor as High Court, except where the accused is a European British subject, in which cases, and in those of persons jointly charged with a European British subject, the Chief Court of Lower Burma is, as elsewhere, the High Court. An appeal would apparently lie to the Privy Council from the Court of the Lieutenant-Governor in cases arising in the Shan States, and finally dealt with by him.</p>				
<p>CACHAR. See EASTERN BENGAL AND ASSAM. CALCUTTA. See BENGAL.</p>				
<p>CANADA, DOMINION OF. <i>Remarks.</i>—The Supreme Court of Canada, established in 1875 by 38 Vict., c. 11 (Can.), amended by R. S. C., 1886, c. 136, and 64 &amp; 65 Vict., c. 26, has an appellate jurisdiction, civil and criminal, over all Canada. An appeal lies to it—subject to regulations—from the final judgments of the highest Court of final resort in every province. An unsuccessful litigant</p>				

in the highest provincial Court may, however, appeal direct to the Privy Council, under the rules in force before the constitution of the Supreme Court, or upon terms. "The judgment of the Supreme Court shall in all cases be final and conclusive, and no appeal shall be brought [from its judgment] to any Court of Appeal established by the Parliament of Great Britain and Ireland, by which appeals or petitions to Her Majesty in Council *may be ordered* to be heard" (s. 47). As to scope of words in italics, see *Johnston v. S. Andrew's Church, Montreal* (1877), 3 App. Cas. 159. His Majesty's prerogative to grant special leave is reserved (S. C., and cp. Att.-Gen. for Nova Scotia v. Gregory (1886), 11 App. Cas. 229). No appeal now lies direct from the North-West Territories nor the Yukon Territory to the Privy Council. In the former the Governor-General in Council may prescribe the conditions of appeal (4 & 5 Edw. VII. c. 27, s. 9) and in the latter an appeal lies through the Supreme Court of British Columbia (62 & 63 Vict. c. 11, s. 7) or direct (*ibid.*, s. 13) to the Supreme Court of Canada. As to relations between Crown and provinces, see Liquidator of Maritime Bank of Canada v. Receiver-General of New Brunswick [1892] App. Cas. 437; "Jour. Comp. Leg.," vol. ii., p. 265. See also Wheeler, "Confederation Law of Canada," pp. 394, 405; *Valin v. Langlois* (1879), 5 App. Cas. 115.

CANADA : PROVINCES.

(1.) ALBERTA.

*Remarks.*—The law courts and officers existing in the territories of Alberta and Saskatchewan immediately before their being established as provinces are continued (4 & 5 Edw. VII. c. 3, s. 16; 4 & 5 Edw. VII. c. 41, s. 16).

Final judgment for sum above, or involving directly or indirectly claim to property or civil right amounting to or of value of, £300. From interlocutory judgment, by leave.

Fourteen days.

Execution may be stayed or not, appellant or respondent giving security as case may be. Appellant to give security not exceeding £500, in all cases. Security to be found within three months of motion for leave to appeal.

Can. Acts, 49 Vict., Nos. 25, 50. Order in Council of July 30th, 1891 (see *North-West Territories Gazette*, vol. ix., p. 43; Stat. R. & O. Rev., 1904, vol. vi., "Judicial Committee," p. 71).

## CONDITIONS OF APPEAL TO THE PRIVY COUNCIL (Continued)—

Colony, Possession, &c.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked	Security required.
(2.) BRITISH COLUMBIA (including VANCOUVER'S ISLAND). <i>Remarks</i> .—Direct appeal to Privy Council, or appeal to Supreme Court of Canada, and thence only by special leave of Privy Council. [British Columbia and Vancouver's Island were united in 1866 by 29 & 30 Vict., c. 67, s. 3, and their Supreme Courts were merged from March 28th, 1870, under the title of "The Supreme Court of British Columbia."] ]	Order in Council of July 12th, 1887 (Stat. R. & O. Rev. 1904, vol. vi., "Judicial Committee," p. 16).	Final order, judgment, or decree for any sum more than, or involving directly or indirectly any claim to property in civil right amounting to or of value of, £300.	Fourteen days.	Execution may be stayed or not; if not, respondent must give good and sufficient security. In all cases appellant must give security, regulated by Court below, and not exceeding £500, within three months from date of petition for leave to appeal.
(3.) MANITOBA. <i>Remarks</i> .—Direct appeal to Privy Council or appeal to Supreme Court of Canada, &c. (see CANADA, <i>supra</i> ). Manitoba was created a province by the Manitoba Act, 1870, 33 Vict., No. 3; confirmed by 34 Vict., No. 28.	Man. Stat. 48 Vict., No. 48. Order in Council of March 16th and November 26th, 1892 (Stats. of Can., 1892, p. 13; Stat. R. & O. Rev., 1904, vol. vi., "Judicial Committee," p. 55).	From any judgment for sum of, or involving directly or indirectly any claim to property or civil right above £300.	Fourteen days.	Execution may be stayed or not; if not, respondent must give good and sufficient security. In all cases appellant must give security, regulated by Court below, and not exceeding £500, within three months from date of petition for leave to appeal.
(4.) NEW BRUNSWICK. <i>Remarks</i> .—Direct appeal to Privy Council, &c. (see CANADA, <i>supra</i> ). Where the Judges differ, and are equally divided, a <i>pro forma</i> judgment is to be deemed a judgment for the purposes of appeals.	Order in Council of November 27th, 1852 (Stat. R. & O. Rev., 1904, vol. vi., "Judicial Committee," p. 61).	Final judgment for sum above, or involving directly or indirectly claim to property in civil right amounting to or of value of, £300; or questions whereby the rights of His Majesty, his heirs or successors, may be bound; or (by leave of the Court) from interlocutory judgment.	Fourteen days.	The Court may direct judgment to be carried out, respondent giving good and sufficient security, or suspended. Appellant's security regulated by the Court below, and not to exceed £500. Within twenty-eight days of motion for leave to appeal.
(5.) NOVA SCOTIA. <i>Remarks</i> .—Appeal direct to Privy Council, &c. (see CANADA, <i>supra</i> ). Where the Judges differ,	Order in Council of March 20th, 1863 (Stat. R. & O. Rev.,	Final judgment for sum above, or involving directly or indirectly claim to property	Fourteen days.	The Court may direct judgment to be carried out, respondent giving good and sufficient

and are equally divided, a <i>pro forma</i> judgment is to be deemed a judgment for the purposes of appeals. As to annexation of Cape Breton to Nova Scotia, see <i>In re Cape Breton Island</i> (1846), 5 Moo. P. C. 259.	1904, vol. vi., "Judicial Committee," p. 79).	in civil right amounting to or of value of, £300, or questions whereby the rights of His Majesty, his heirs or successors may be bound; or (by leave of the Court) from interlocutory judgment.	security, or suspended. Appellant's security regulated by the Court below, and not to exceed £500, within twenty-eight days of motion for leave to appeal.
(6.) ONTARIO (OR UPPER CANADA). <i>Remarks</i> .—Appeal direct to Privy Council, &c. (see CANADA, <i>supra</i> ). As to practice on appeals to Supreme Court, see notes, in Wheeler's "Confederation Law of Canada," to s. 101 of B. N. A. Act, 1867, p. 399. Appeal from arbitrators as to disputed accounts between Dominion and Province under 54 Vict., No. 2, and (without being subject to conditions prescribed by Rev. Stats.) from judgments of Courts to which constitutional question has been referred by Lieutenant-Governor under 53 Vict. (Ont.), No. 13.	Rev. Stats., Ont., 1897, p. 549.	Above \$4,000, or questions affecting the taking of any annual or other rent, customary or other duty, or any demand of a general or public nature. Also on certain financial matters (54 Vict. (Ont.), No. 2).	Not exceeding \$2,000. Execution stayed on security being perfected.
(7.) PRINCE EDWARD ISLAND, CANADA. <i>Remarks</i> .—Appeal direct to Privy Council, &c. (see CANADA, <i>supra</i> ). In the Royal Instructions of December 13th, 1838, the governor was ordered to admit appeals (a) to himself in Council where the matter in question amounted to £300; (b) to the Queen in Council where it amounted to £500 (cp. <i>In re Cambridge</i> (1841), 3 Moo. P. C. 175; <i>In re Monckton</i> (1837), 1 Moo. P. C. 455; and in cases of fines, £100; Safford and Wheeler, "Privy Council Practice," p. 400.	Code of Civil Procedure, arts. 68 & 69. See Safford and Wheeler, "Privy Council Practice," p. 401 <i>et seq.</i>	From final judgment where sum in dispute exceeds £500; also where it relates to money payable to His Majesty. As to appeal by	Good and sufficient security to prosecute appeal and to pay sum due and costs of appeal, unless no consent to execution of judgment, in which
(8.) SASKATCHEWAN. <i>Remarks</i> .—See ALBERTA.		No time prescribed.	
(9.) QUEBEC (OR LOWER CANADA). <i>Remarks</i> .—Appeal direct to Privy Council, &c. (see CANADA), from final judgment by Court of King's Bench, or in certain cases by Court of Review (see <i>supra</i> , p. 231).			

CONDITIONS OF APPEAL TO THE PRIVY COUNCIL (*Continued*)—

Colony, Possession, &c.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
<b>NORTH-WEST TERRITORIES and YUKON TERRITORY</b> (see <i>supra</i> ).		special leave, see <i>Clergue v. Murray</i> [1903] A. C. 521, or matters by which future rights may be affected.		case only security for costs of appeal. Execution cannot be prevented after six months from date of allowance of appeal, unless appellant files certificate that appeal lodged.
<b>CAPE OF GOOD HOPE.</b> <i>Remarks.</i> —"Statute Law of Cape of Good Hope" (1714—1853), p. 220 : Griqualand West was incorporated with Cape Colony on October 15th, 1880. See also <b>SOUTH AFRICA</b> : Van Zyl, "Jud. Pract. in South Africa" : Van Breda <i>v.</i> Silberbauer (1869), 6 Moo. P. C. N. S. 319 ; Cook <i>v.</i> Sprigg (1899), A. C. 572, 15 T. L. R. 515. See p. 304, <i>supra</i> .	Charter of Justice, May 4th, 1832, arts. 50, 51 (Stat. R. & O. Rev., 1904, vol. vi., "Judicial Committee," p. 22).	Final judgment for sum above, or on claim to property or civil right amounting to or of value of, £500.	Fourteen days (see <i>Jones v. Cape Town Town Council</i> (1895), 12 Cape S. C. 144).	Judgment may be either executed, respondent giving good and sufficient security, or suspended. In all cases appellant to give security, regulated as to amount by Court below, within three months.
<b>CENTRAL PROVINCES.</b> <i>Remarks.</i> —The Central Provinces are in British India, and are administered by a Chief Commissioner. Only a small portion of these provinces, comprising 54 zamindaris,—falls within the category of "Scheduled districts" (see pt. 6 of Sch. I. to the Scheduled Districts Act, xiv. of 1874). The greater part of the Sambalpur District was transferred from the Central Provinces to Bengal in 1905 (see the Bengal and Assam Laws Act, vii. of 1905, Sch. C.). The Court of the Judicial Commissioner is the highest (Civil Court of Appeal in the Central Provinces, and, except in proceedings against European British subjects and persons jointly charged with them, which are subject, in the Jabalpur District, to the cognizance of the High Court at Allahabad, and, in the other districts, to the cognizance of the High Court at	For conditions of appeal see <b>BRITISH INDIA</b> .			

Bombay, it is also the highest Court of Criminal Appeal and Revision, and has authority to transfer cases to any Additional Judicial Commissioner who may be appointed (see Act. ii. of 1894, ss. 3—5). Original and appellate criminal jurisdiction over European British subjects is exercised in the Upper Godavari District—now a part of the Chanda District—by the High Court at Madras; in the Jabalpur Division by the High Court at Allahabad; and in the Nagpur, Nerbada, and Chhatissgarh Divisions by the High Court at Bombay: "Gazette of India," 1874, Pt. I., p. 484. An appeal lies to the Privy Council from the Judicial Commissioner and the Additional Judicial Commissioner, and from the several High Courts referred to.

**CEYLON.**

*Remarks.*—An appeal lies to the Privy Council from the Supreme Court.

Charter, February 18th, 1833 (Stat. R. & O. Rev., 1904, vol. i., "Ceylon," p. 3), and Ordinances No. 1 of 1889; No. 2 of 1889, ss. 779—90; No. 15 of 1898, s. 333; No. 23 of 1901, s. 3; No. 24 of 1901, s. 10.

Final judgment for sum above, or on claim to property or civil right amounting to, Rs. 5,000.

Fourteen days.

Judgment executed on security for restitution being given by respondent, appellant's security not exceeding Rs. 3,000. Where subject-matter is immovable property, or stock &c., thereon, and judgment does not charge, affect, or relate to actual occupation, no security is to be demanded from either party; where judgment does so charge, &c., no greater security than necessary to secure its integrity.

**CHAGAI.** See INDIA outside BRITISH INDIA.

**CHANNEL ISLANDS.** See GUERNSEY, JERSEY.

**CHIN HILLS.** See BURMA.

**CHINA.**

*Remarks.*—Appeal lies from Provincial Courts to Supreme Court at Shanghai against decision for sum, or on claim to property in civil right of value of, £25. There is no appeal to the Privy Council in criminal cases except by special leave of the Privy Council.

China and Corea Order in Council of 1904 (Stat. R. & O., 1904, p. 193).

Final decree of Supreme Court of Shanghai for sum, or on claim as to civil right, of the value of £500; in other cases, by leave of Supreme Court of Shanghai.

Fifteen days.

Execution of decree may be carried out, respondent giving security, or suspended. In all cases appellant to give security not exceeding £500, within one month.

CONDITIONS OF APPEAL TO THE PRIVY COUNCIL (*Continued*)—

Colony, Possession, &c.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
CHITTAGONG HILLS. See EASTERN BENGAL and ASSAM. CHOTA NAGPUR. See BENGAL. COORG.	For conditions of appeal see BRITISH INDIA.			
<i>Remarks.</i> —Coorg has been a part of British India since its annexation in 1834, and is a scheduled district (see pt. 7 of Sch. I. to the Scheduled Districts Act, xiv. of 1874). The Judicial Commissioner is the High Court for Coorg in both civil and criminal matters, except that original and appellate criminal jurisdiction over European British subjects is reserved to the High Court at Madras (see the Coorg Courts Regulation, I. of 1901, ss. 7 and 16, and "Gazette of India," 1874, Pt. I., p. 484). An appeal lies to the Privy Council from the Judicial Commissioner and from the High Court at Madras.	Order in Council of July 15th, 1881, regulating appeals from the High Court and the Temyiz Court (Stat. R. & O. Rev., 1904, vol. v, "Foreign Jurisdiction," p. 319); confirmed by Order in Council of November 30th, 1882, Cyprus Courts of Justice Order, 1882, abolishing the Temyiz Court, superseding the High Court and	From final judgment for sum of, or involving directly or indirectly claim to property or civil right of value of £500. From interlocutory orders by leave of Supreme Court.	Fourteen days.	If sentence executed, respondent must find security. Appellant's security regulated by Court below, not exceeding £500; within three months.
CYPRUS. <i>Remarks.</i> —As to law of Cyprus (Parapano v. Hapaz [1894] App. Cas. 165). As to history of establishment of Courts, &c., see High Commissioner's reports.				
COREA. See CHINA.				

<p>DARJEELING. See <b>BENGAL</b></p> <p>DERA ISMAIL KHAN. See <b>NORTH-WEST FRONTIER PROVINCE</b>.</p> <p>DHARWAR. See <b>BOMBAY</b>.</p> <p>DOMINICA. See <b>LEEWARD ISLANDS</b>.</p> <p><b>EASTERN AFRICA</b> (consisting of <b>EAST AFRICA</b>, <b>UGANDA</b>, <b>BRITISH CENTRAL AFRICA</b> <b>PROTECTORATES</b>).</p> <p><i>Remarks</i>.—Appeal lies from High Court of East Africa, constituted by Order in Council of August 11th, 1902 (Stat. R. &amp; O., vol. v., "Foreign Jurisdiction," p. 68, at pp. 73 <i>et seq.</i>), through a Court of Appeal for <b>EASTERN AFRICA</b> (<i>q. v.</i>).</p> <p><b>EASTERN BENGAL AND ASSAM</b>.</p> <p><i>Remarks</i>.—The Lieut.-Governorship of Eastern Bengal and Assam, in British India, comprises fifteen districts, which, until 1905, formed a part of the Bengal Presidency, and the Province of Assam, which includes Assam proper, in the Brahmaputra valley, the Cachar plains, and Sylhet in the Surma valley (see Sch. A and B to the Bengal and Assam Laws Act, vii. of 1905). The Province of Assam is a scheduled district. The Jalpaiguri district and the Chittagong Hill-tracts, which were transferred from Bengal in 1905, are also scheduled. (See pts. 3 and 10 of Sch. I. to the Scheduled Districts Act, xiv. of 1874.) In the Chittagong Hill-tracts, the Commissioner of Chittagong is the High Court in all civil matters, and in all criminal matters also, except the confirmation of sentences of death, as to which power is reserved to the Lieut.-Governor of Bengal. (See the Chittagong Hill-tracts Regulation, I. of 1900, ss. 9, 18, 19, and the Bengal Local Statutory Rules and</p>	<p>regulating appeals. Art. 41 (Stat. R. &amp; O. Rev., 1904, <i>ubi cit. supra</i>, p. 311).</p> <p>Order in Council of August 11th, 1902.</p> <p>For conditions of appeal, see <b>BRITISH INDIA</b>.</p>	<p>From final judgment or order of Court of Appeal in civil action involving amount or value of Rs. 10,000; or by leave of Court of Appeal in any case (art. 9). Right of Crown to grant special leave reserved by art. 11.</p> <p>Three months or such time as may be prescribed by Rules of Court.</p> <p>Amount not to exceed Rs. 5,000. Execution may be carried out, respondent giving security, or suspended.</p>
--	--	---



CONDITIONS OF APPEAL TO THE PRIVY COUNCIL (*Continued*)—

Colony, Possession, &c.	Authority under which appeals are tendered.	Appellable amount.	Limit of time within which leave to appeal must be asked.	Security required
<p>Orders, 1903, vol. ii., p. 93, rule 10.) With these exceptions, and subject, in the case of other hill tracts, to any orders issued under s. 6 of the Scheduled Districts Act, or under the Assam Frontier Tracts Regulation, II. of 1880, as extended by Regulation III. of 1884, the High Court at Calcutta appears to be the High Court for both civil and criminal cases throughout Eastern Bengal and Assam. (See the Bengal, Agra, and Assam Civil Courts Act, xii. of 1887, and the Code of Criminal Procedure, Act v. of 1898.) An appeal lies to the Privy Council from the Commissioner of Chittagong, the Lieut.-Governor, and the High Court. For the Assam Hill Districts, comprising the Garo, the Khasi and Jaintia, the Lushai, and the Naga Hills, and for North Cachar, the highest Court of Appeal would appear to be the Court of the Lieut.-Governor; and, if so, that Court would be the High Court for those districts under the definition in s. 3 (24) of the Indian General Clauses Act (x. of 1897), from which an appeal would lie to the Privy Council under ss. 595 <i>et seq.</i> of the Indian Code of Civil Procedure, Act xiv. of 1882.</p>				
<p><b>EGYPT.</b>  <i>Remarks.</i>—The Ottoman Order in Council, 1873 (Stat. R. &amp; O. Rev. (1890), at vol. iii., p. 646), and Ottoman Dominions (Courts) Order in Council, 1895 (Stat. R. &amp; O., 1895, p. 269), were repealed by the Ottoman Order in Council, 1899, together with the other Ottoman Orders, and consolidated. The operation of the Order of 1873 was suspended in Egypt in mixed cases by Order in Council of February 6th, 1876 (Stat. R. &amp; O. Rev. (1890), vol. iii., p. 690); and the</p>	<p>Ottoman Order in Council, August 8th, 1899 (Stat. R. &amp; O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 742, at pp. 763, 780, 781).</p>	<p>From final order of Supreme Court at Constantinople involving amount or value of £500.</p>	<p>Within prescribed time, or, if no time prescribed, fifteen days.</p>	<p>Appellant's security not exceeding £500, within one month. Execution may be carried out, respondent giving security, or suspended.</p>

Order of 1899 only applies to so much of Egypt as is north of the 22nd parallel of north latitude (Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 742). The Supreme Court may give leave to appeal in any case (art. 133 [5]), and prerogative of Crown preserved (art. 135). No appeal in criminal cases unless by special leave of Privy Council (art. 62).

**FALKLAND ISLANDS.**

**FEDERATED MALAY STATES.**

*Remarks.*—The native States of the Malay Peninsula are under British influence, and the governments of the local princes are administered under the advice of the resident agents of our Government. Four of these States form a federation called the Protected Malay States ("C. O. List," 1906, p. 336; and article, "Straits Settlements," in "Encyclo. Laws of England." See also Hert. xxii., "Gen. Ind., s.r. "Malay States").

**FILIP ISLANDS.**

Ordinance No. 4 of 1901 (s. 25).	From judgment of Supreme Court for sum above £500.	Fourteen days.	Good and sufficient security by appellant; within three months. Execution may be carried out or stayed, respondent or appellant giving security as case may be.
Order in Council, May 11th, 1906. PAHANG, No. 11 of 1902 Code Civ. Proc.; SELANGOR, No. 13 of 1902, Civ., No. 16 of 1902, Crim.; NEGRI SEMBILAN, Code Civ. Proc. No. 7 of 1902; and see Cts. Enactment, 1900 (amended in details, No. 10 of 1902), Code Crim. Proc. No. 4 of 1903; PERAK, No. 11 of 1902, Code Civ. Proc. No. 14 of 1902, Cts. Amendment Code Crim. Proc.	From final judgment or Order of the Court of Appeal in civil action involving amount or value of £500.	Fifteen days if no time is prescribed by the Court.	Appellant's security not exceeding £500, within two months from the filing of the motion-paper for leave to appeal.
Order in Council of February 22nd, 1878 (Stat. R. & O. Rev., 1904, vol. vi., "Judicial Committee," p. 24). Pacific Ocean Order in Council 1893 (Stat. R. & O.	From judgment of Supreme Court, either in exercise of municipal jurisdiction, or as Court of Appeal under Pacific Ocean Order in Council, 1893, for sum of £500.	Fourteen days.	Appellant's security not exceeding £500 within three months.

CONDITIONS OF APPEAL TO THE PRIVY COUNCIL (*Continued*)—

Colony, Possession, &c.	Authority under which appeals are tendered.	Appealable amount	Limit of time within which leave to appeal must be asked.	Security required.
<p>Fort William. See BENGAL and BRITISH INDIA.</p> <p>GAMBIA.</p> <p><i>Remarks.</i>—From final judgment of Supreme Court of SIERRA LEONE (see Order in Council of November 24th, 1891, Stat. R. &amp; O. Rev., 1904, vol. vi., "Gambia," p. 5, No. 7 of 1902; and SIERRA LEONE, <i>infra</i>). Gambia Hinterland has been brought under the jurisdiction of the Courts of Gambia by Order in Council of November 23rd, 1893 (Stat. R. &amp; O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 143).</p> <p>GANJAM. See MADRAS.</p> <p>GARHWAL. See UNITED PROVINCES of AGRA and OUDH.</p> <p>GARO HILLS. See EASTERN BENGAL and ASSAM.</p> <p>GIBRALTAR. See MOROCCO; also "Laws of Gibraltar," 1890.</p>	<p>Rev., 1904, vol. v., "Foreign Jurisdiction," p. 484, at pp. 511, 512).</p> <p>Supreme Court Consolidation Order in Council, 1888 ("Laws of Gibraltar" (1390), pp. 512, 513, Stat. R. &amp; O. Rev., 1904, vol. vi., "Gibraltar," p. 19), repealing Charter of Justice, September 1st, 1830.</p>	<p>Judgment for sum above, or involving directly or indirectly claim to civil right, &amp;c., equal to or more than £300 (7,500 pesetas): English coinage substituted by Ordinance No. 6 of 1898, in pursuance of Order in Council of August 9th, 1898.</p>	<p>Fourteen days.</p>	<p>Execution carried out or suspended, respondent or appellant giving security as case may be. Appellant's security for prosecution of appeal to be found within three months.</p>
GODAVARI. See MADRAS.				

<p><b>GOLD COAST COLONY.</b>  <i>Remarks.</i>—By letters patent of July 24th, 1874, the Gold Coast and Lagos were erected into one colony as the Gold Coast Colony, the Supreme Court for the Gold Coast being the Supreme Court for the colony. By letters patent of January 13th, 1886 (Stat. R. &amp; O. Rev., 1904, vol. vi., "Lagos," p. 1), Lagos (see p. 270, note (c)) was made a separate colony. As to Hinterland, see Order in Council of September 26th, 1901 (Stat. R. &amp; O. Rev., 1904, vol. v., "Foreign Jurisdiction," pp. 146—149).</p> <p><b>GOZO.</b> See MALTA.</p>	<p>Order in Council of October 23rd, 1877 (Stat. R. &amp; O. Rev., 1904, vol. vi., "Judicial Committee," p. 27).</p>	<p>Final judgment or decree for sum above, or involving directly or indirectly claim to property or title amounting to or of value of, £500, or (by leave of Supreme Court) from interlocutory judgment.</p>	<p>Not more than £500 sterling; within three months. Execution may be carried out, respondent giving good and sufficient security, or suspended.</p>
<p><b>GRENADA, GRENADINES.</b> See WINDWARD ISLANDS.</p> <p><b>GRIQUALAND EAST.</b>  <i>Remarks.</i>—Appeal from Supreme Court of Cape of Good Hope on ordinary conditions (see CAPE OF GOOD HOPE, and Cape Act, No. 35 of 1896, s. 22). Griqualand East is within jurisdiction of Court of Eastern districts (No. 35 of 1896, s. 13).</p>			
<p><b>GRIQUALAND WEST.</b>  <i>Remarks.</i>—From Supreme Court of Cape on ordinary conditions (see CAPE OF GOOD HOPE, and Cape Act, No. 35 of 1896, s. 22). Appeal to Supreme Court from High Court of Griqualand on twenty-one days' notice. Appeal to be prosecuted within three months. Good and sufficient security (No. 35 of 1896, ss. 24, 26). As to practice, see Van Zyl, "Jud. Prac. in South Africa," p. 555.</p>			
<p><b>GUERNSEY</b> (including ALDERNEY, HERM and JETHOU ISLANDS, and SARK).  <i>Remarks.</i>—The appeal from Alderney is through the Royal Court of Guernsey. Herm unsuccessfully attempted to assert its independence in 1887. (Martyn v. McCulloch (1837). 1 Moo. P. C. 908.)</p>	<p>Orders in Council of May 13th, 1823, and July 15th, 1835 (Stat. R. &amp; O. Rev., 1904, vol. vi., "Judicial Committee," pp. 30, 39).</p>	<p>Realty, £10 sterling; personalty, £200 sterling.</p>	<p>Six months.</p>

## CONDITIONS OF APPEAL TO THE PRIVY COUNCIL (Continued)—

Colony, Possession, &c.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
HAZARA. See NORTH-WEST FRONTIER PROVINCE. HERM. See GUERNSEY. HISWA. See ADEN. HONG-KONG. <i>Remarks</i> .—Privy Council Blue Book, 1862, "Orders in Council respecting Appeals from the Colonies," p. 10. As to jurisdiction of Supreme Court in China and Corea, see Order in Council of 1904 (Stat. R. & O., 1904, pp. 193, 201, 220). Order in Council, March 9th, 1865, ss. 159, 160. Hert. xii., p. 316). As to appeals from Wei-hai-Wei, see WEI-HAI-WEI.	Instructions of January 21st, 1846, confirmed by art. xvii. Instructions of January 19th, 1888 (Stat. R. & O. Rev. vol. vi., "Judicial Committee," p. 31; <i>ibid.</i> , vol. v., "Foreign Jurisdiction," p. 248).	From final judgment of Supreme Court for sum, or involving directly or indirectly title to property or civil right, above £500.	Fourteen days.	Appellant's security regulated by Court below, not exceeding £300; within three months. Execution may be carried out or suspended, respondent or appellant giving security as case may be. Where subject of litigation immovable property, and judgment does not charge, affect, or relate to actual occupation thereof, no security; where it does so charge, &c., only sufficient security to guarantee restitution free from damage.
IMAD. See ADEN. INDIA outside BRITISH INDIA. <i>Remarks</i> .—India outside British India comprises the territories which were at one time described as "the dominions of Princes and States in alliance with" the Crown. See s. 22 of the Indian Councils Act, 1861 (24 & 25 Vict. c. 67). They are now described as the territories of native Princes or Chiefs "under the suzerainty" of the Crown, exercised through the Governor-General of India or any subordinate officer. See s. 18 (5) of the Inter-	In places where there are British Courts exercising extraterritorial jurisdiction, under the Order in Council of June 11th, 1902, the conditions of appeal to the Privy Council would generally be the same as for BRITISH INDIA.			

pretation Act, 1889 (52 & 53 Vict. c. 63). These territories are governed by their own Princes and Chiefs; and the Indian Legislature has no power under s. 22 of the Indian Councils Act, 1861, to establish any Courts of justice in them. It can only make laws for all "servants of the Government of India," all "British subjects," and all "native Indian subjects" of the Crown, within those territories; and, generally, outside British India, for officers and soldiers of His Majesty's Indian Army, "whosoever they may be serving," and for all persons employed or serving in or belonging to His Majesty's Indian Marine Service whose vessels are within Indian waters. See s. 22 of the Act of 1861, s. 1 of 28 & 29 Vict. c. 17, s. 1 of 32 & 33 Vict. c. 98, s. 73 of 3 & 4 Will. IV., c. 85, and ss. 2, 3 of 47 & 48 Vict. c. 38. The Governor-General in Council is empowered also by statute (28 & 29 Vict. c. 15, s. 3) to issue orders authorising any of the Chartered High Courts at Calcutta, Madras, Bombay and Allahabad, to exercise jurisdiction in respect of Christian subjects of the Crown resident within the territories of native Princes; and, in the exercise of this power, original and appellate criminal jurisdiction has been conferred on those Courts in respect of such subjects resident in a large number of such territories (see "Gazette of India," 1874, Pt. I., pp. 485, 612; *ibid.*, 1875, p. 404. In those States where the political officers of the British Government exercise civil and criminal jurisdiction in certain cases on behalf of the Chiefs, for the better maintenance of peace, good order, and security in their territories, and in pursuance of guarantees given by the paramount power, their action is generally political, not judicial; and that being so, no appeal lies from their decisions, or from the decisions of higher executive authorities on appeal, to the Privy Council. See, as regards the States of Kathiawar, *Hemchand v. Azam Sakarlal*, and *The Taluka of Kotda Sangani v. The State of Gondal* (1906), L. R. 33 Ind. App. 1. In many

CONDITIONS OF APPEAL TO THE PRIVY COUNCIL (*Continued*)—

Colony, Possession, &c.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
<p>cases, the States have ceded civil and criminal jurisdiction over certain tracts of land to the British Government, as, for instance, in the case of lands used as British cantonments, or civil stations, or for the construction of railways. Such lands, though remaining foreign territory, are practically governed by the Crown, and appeals would apparently lie to the Privy Council from the highest Courts of Appeal for such tracts. For instance, an appeal has been heard from the Resident in Mysore at Bangalore. See <i>In re Lubeck</i> (1906), L. R. 32 Ind. App. 217. See also Aitchison's "Treaties," vol. 8, pp. 439, 480; and Macpherson's "British Enactments in force in Native States, Southern India," pp. 96, 96, 131. On this ground also an appeal would lie apparently to the Privy Council from the Judicial Commissioner of Berar—a province which, in 1902, was leased in perpetuity by the Nizam of Hyderabad to the Government of India, and is now administered by the Chief Commissioner of the Central Provinces, and from the Judicial Commissioner of Baluchistan, as the highest Court of Appeal for those portions of Baluchistan, (including Quetta, Nushki, Zhob, Chagai, Nasirabad, and the Bolan) which have been held, since 1882, under a perpetual lease from the Khan of Kalat, and are administered by the Agent to the Governor-General in Baluchistan (see Macpherson's British Enactments in force in Native States, 6 vols., 1899—1900, and the Baluchistan Code, 1900). In other cases, the Crown possesses, by treaty, grant, usage, sufferance, or other lawful means, powers and jurisdiction in Native States over British subjects, and other persons who might be subject thereto. In these</p>				

cases, and also in the cases where civil and criminal jurisdiction over their own subjects has been ceded by the States, orders for the exercise of the powers and jurisdiction possessed by the British Government were issued formerly under the Indian Foreign Jurisdiction Acts, xi. of 1872, and xxi. of 1879, and are now issued under the Order in Council of June 11th, 1902, issued under the Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 37) : Stat. R. & O. Rev., 1904. V. Foreign Jurisdiction, p. 423. The authorities exercising extritorial judicial jurisdiction under this Order are British Courts of Justice, and from such Courts, dealing finally with cases coming before them, an appeal would lie to the Privy Council.

ISLE OF MAN.

*Remarks.*—Appeal must be prosecuted within six months (cf. Christian v. Wren (1716), 1 L. Wms. 329, and Att.-Gen. Isle of Man v. Mylchreest (1879), 4 App. Cas. 204). See Mill, "Stats. I. M.," 245 ; Stow. *ibid.*, 27.

JALPAIGURI. See EASTERN BENGAL AND ASSAM.

JAMAICA. See BRITISH HONDURAS, TURKS and CAICOS ISLANDS.

Act of Tynwald, August 11th, 1736, s. x. (14), proclaimed June 24th, 1737 ; and see Isle of Man Jud. Act, 1883, s. 34.

From all decrees of Staff of Government Division of High Court of Isle of Man. No amount fixed by statute ; and the Commissioners of 1791 said there was an appeal in all cases (Report, 1792, pp. 80, 84). There is some authority for a customary £5 limit (c).

Six months.

Appellant's security regulated by Court below. Execution suspended during appeal (e).

Order in Council of April 14th, 1851 (Stat. R. & O. Rev., 1904, vol. vi., "Judicial Committee," p. 41).

Final judgment for sum above, or for claim to property in civil right amounting to or of value of, £300.

Fourteen days.

Execution may be carried out, respondent giving good and sufficient security, or suspended. Appellant's security regulated by Court below, not exceeding £500. To be found within twenty-eight days of the motion to appeal. Where Judges equally divided in opinion, *pro forma* judgment sufficient for purposes of appeal.

(c) The Editors are indebted for this information to the kindness of Mr. George A. Ring, Attorney-General of the Isle of Man.



CONDITIONS OF APPEAL TO THE PRIVY COUNCIL (*Continued*)—

Colony, Possession, &c.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
<p><b>JANUSAR BAWAR.</b> See UNITED PROVINCES of AGRA and OUDH.</p> <p><b>JERSEY.</b>  <i>Remarks</i>—The Privy Council may grant special leave on petition (<i>doléance</i>) in cases not coming within conditions of Order in Council (see Parl. Rep., Jersey, 1860, p. 124, <i>ans.</i> 2873; and see Clark, "Colonial Law," 708 n [2]). As to special leave in criminal cases, see Esnouf v. Att.-Gen. for Jersey (1883), 8 App. Cas. 304.</p>	<p>Orders in Council of May 19th, 1671 (Stat. R. &amp; O. Rev., 1904, vol. vi., "Judicial Committee," p. 44); July 15th, 1835 (<i>ibid.</i>, p. 33). See also Order in Council of December 15th, 1679, recalling Order in Council of May 21st, 1679. Orders in Council of July 15th, 1835 (cp. Parl. Rep., Jersey, 1860, p. liii, "Recueil des Lois," vol. i., p. 214); June 13th, 1853 (<i>ibid.</i>, vol. ii., p. 32); June 26th, 1873 (<i>ibid.</i>, vol. iii., p. 80); July 14th, 1899 (Du Pareq, Jersey, 5, 99, 300). See also Order in Council of May 19th, 1671 Safford and Wheeler, "Privy Co. Prac," pp. 225—239).</p>	<p>Real actions, 5 "livres tournois" per annum. Personal actions, above £200 sterling (✓).</p>	<p>Court must be moved at time of judgment, and appeal prosecuted within three months.</p>	<p>Regulated by Court below; within eight days.</p>
<p><b>JETHOU.</b> See GUERNSEY.</p> <p><b>KACHIN HILLS.</b> See BURMA.</p> <p><b>KATHIAWAR.</b> See INDIA outside BRITISH INDIA.</p>				

(✓) The Editors are indebted for this information to the kindness of Mr. A. Hilgrove Turner, Attorney-General of Jersey.

<p>KHANDESH. See BOMBAY.</p> <p>KHASI and JAINTHIA HILLS. See EASTERN BENGAL and ASSAM.</p> <p>KHONDMAIS. See BENGAL.</p> <p>KOHAT. See NORTH WEST FRONTIER PROVINCE.</p> <p>KUMAON. See UNITED PROVINCES of AGRA and OUDH.</p> <p>LABUAN.</p> <p><i>Remarks.</i>—No rules. By 29 &amp; 30 Vict., c. 116, s. 3, Her Majesty was empowered to place the island under the government of the STRAITS SETTLEMENTS (<i>q.v.</i>), and by letters patent, dated October 30th, 1906, the boundaries of the colony were extended so as to include Labuan ("Jour. Soc. Comp. Leg.," vol. ii., p. 271).</p>			<p>LACCADIVE ISLANDS. See MADRAS.</p> <p>LAGOS. See GOLD COAST COLONY.</p> <p><i>Remarks.</i>—As to Lagos Hinterland, see Orders in Council of December 29th, 1887, and July 24th, 1901 (Stat. R. &amp; O. Rev., 1904, vol. v., "Foreign Jurisdiction," pp. 160, 151).</p>	<p>Order in Council of July 5th, 1889 (Stat. R. &amp; O. Rev., 1904, vol. vi., "Judicial Committee, p. 47).</p> <p>West India Appeals Act, 1850, 13 &amp; 14 Vict. c. 15, repealed by 52 &amp; 53 Vict. c. 33. Order in Council of June 8th, 1864 (Stat. &amp; R. O. Rev. (1890), vol. iv., p. 339). Privy Council Blue Book, 1862.</p>	<p>Final judgment or decree for sum above, or involving directly or indirectly claim to property or title amounting to or of value of, £500; or (by leave of Supreme Court) from interlocutory judgment.</p> <p>Final judgment for sum above, or involving directly or indirectly claim to property in civil right amounting to or of value of, £300.</p>	<p>Fourteen days.</p> <p>Fourteen days.</p>	<p>Appellant's security not more than £500, within three months. Execution may be carried out, respondent giving good and sufficient security, or suspended.</p> <p>Execution may be carried out, respondent giving security. Appellant's security regulated by Court below, not exceeding £500, within three months. Where Judges equally divided, judgment <i>pro forma</i> is to be deemed a judgment for purposes of appeal.</p>
<p>LEEWARD ISLANDS.</p> <p><i>Remarks.</i>—Appeal from interlocutory judgments by leave. Leeward Islands include Anguilla, Antigua, Dominica, Montserrat, St. Christopher, Nevis, and Virgin Islands.</p>							

CONDITIONS OF APPEAL TO THE PRIVY COUNCIL (*Continued*)—

Colony, Possession, &c.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
LEEWARD ISLANDS ( <i>continued</i> )—	See also Supreme Court Act, 1876 (No. 7 of 1876) : Supreme Court Act, 1880 (No. 2 of 1880, No. 1 of 1881) : Supreme Court Act, 1884 (No. 15 of 1884) : Supreme Court Act, 1887 (No. 20 of 1887). Order in Council of March 24th, 1880 (Stat. R. & O. Rev., 1904, vol. vi., "Judicial Committee," p. 50).			
LITTLE ADEN. See ADEN.				
LUSHAI HILLS. See EASTERN BENGAL and ASSAM.				
<p>MADRAS.</p> <p><i>Remarks.</i>—The greater part of the Presidency of Madras, in British India, is subject to the appellate jurisdiction of the High Court at Madras. For the scheduled districts, which comprise the Laccadive Islands (including Minicoy) and certain areas in the Ganjam, Vizagapatam, and Godavari districts (see pt. 1 of Sch. I. to the Scheduled Districts Act, xiv. of 1874, and the concluding words of s. 1 of that Act), other appellate authorities may be appointed by the Madras Government under s. 6 of the Act : and in certain tracts in the Ganjam and Vizagapatam districts the Governor of Madras</p>	For conditions of appeal see BRITISH INDIA.			

in Council possesses appellate jurisdiction, by virtue of rules made under Act xxiv. of 1839, to the exclusion of the High Court. (See *Maharajah of Jeypore v. Papayamma* (1900) I. L. R. 23 Mad. 329.) An appeal lies to the Privy Council from the High Court at Madras, and from any appellate authorities established under the rules above referred to.

**MALACCA.** See STRAITS SETTLEMENTS.

**MALAY STATES.** See FEDERATED MALAY STATES.

**MALTA and GOZO.**

Order in Council of December 18th, 1824, (Stat. R. & O. Rev., 1904, vol. vi., "Judicial Committee," p. 62), and cf. Order in Council of June 26th, 1873.

Fourteen days.

Appellant's security regulated by Court below ; within one month. Execution may be carried out or suspended, respondent or appellant giving security as case may be.

**MANITOBA.** See CANADA.

**MANPUR.**

*Remarks.*—The Pargana of Manpur in Central India is part of British India. It was acquired under treaty in 1861, and is a scheduled district (see pt. 12 of Sch. I. to the Scheduled District Act, xiv. of 1874). No system of law has, it is believed, ever been formally declared in force in the Pargana, but it is understood that the Agent to the Governor-General for Central India is the highest Court of Appeal. An appeal would lie from his Court to the Privy Council. The High Court at Bombay exercises original and appellate criminal jurisdiction over European British subjects in the Pargana of Manpur : "Gazette of India," 1874, Pt. I., p. 484.

**MASHONALAND and MATABELELAND.** See SOUTH AFRICA.

## CONDITIONS OF APPEAL TO THE PRIVY COUNCIL (Continued).—

Colony, Possession, &c.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
<p><b>MAURITIUS.</b>  <i>Remarks.</i>—Cf. Clark, "Colonial Law," p. 594. Under the Orders in Council of August 10th, 1903 (Stat. R. &amp; O. Rev., 1904, vol. xi., tit. "Seychelles," p. 12), and December 8th, 1903. (Stat. R. &amp; O. Rev., 1904, <i>ibid.</i>, at p. 37), an appeal lies to Supreme Court of Mauritius from Court of Seychelles. As to Rodriguez, see Ordinances No. 6 of 1866 and No. 16 of 1890. As to appeals under French administration, see "Laws," ed. by Rouillard, vol. i.</p>	<p>Order in Council of April 13th, 1881 (Stat. R. &amp; O. Rev., 1904, vol. viii., "Mauritius," p. 21; Stat. R. &amp; O. 1899, p. 1693). And see Orders in Council of October 23rd, 1851 (<i>ibid.</i>, p. 25, confirming Ordinance 2 of 1850, providing that the Cour d'Appel shall be called the Supreme Court), and December 12th, 1894, "Maur. Laws Rev." (edit. 1905), iv., pp. 71 <i>et seq.</i></p>	<p>From final judgment of Supreme Court for sum above, or involving directly or indirectly claim to property or civil right of value of Rs. 10,000 (Order in Council of December 12th, 1894; £1,000 under Order in Council, April 13th, 1881).</p>	<p>Fourteen days.</p>	<p>Appellant's security within three months. Execution may be either carried out or suspended, respondent or appellant giving security as case may be.</p>
<p><b>MEHWASSI VILLAGES.</b>  <i>Remarks.</i>—The villages in six Mehwassi estates in the Khandesh District of the Bombay Presidency are a Scheduled District of the Bombay Presidency under pt. 2 of Sch. I. to the Indian Scheduled Districts Act, xiv. of 1874. By Act xi. of 1846 these six estates (and a seventh which is non-scheduled) were exempted from the operation of the Bombay Regulations for the administration of civil and criminal justice, and provision was made for the vesting of such administration in an Agent to the Governor, who, in the exercise thereof, was to be aided by such assistants as the Government might appoint, and be guided by Rules to be framed under the Act. No Rules were, however, promulgated till 1854.</p>	<p>For conditions of appeal, see BRITISH INDIA.</p>			

and pending the issue of Rules the local customary law was followed. When Act xiv. of 1874 was brought into force in the villages in 1887, the Act of 1846 ceased to operate in them: but the local customary law, as modified by the Rules of 1854, remained in force—the customary law under s. 11 of Act xiv. of 1874, and the Rules under s. 7. The collector and magistrate of Khandesh is the Agent for the Government for the purposes of the Rules. An Assistant Collector is the Assistant Agent. In civil cases an appeal lies from the Assistant to the Agent, whose appellate decision is final. In such cases the Agent's Court is a High Court within the meaning of s. 3 (24) of the General Clauses Act, x. of 1897, and ss. 594—598 and 600 of the Code of Civil Procedure, 1882; and an appeal would lie in any such case, if a proper case for appeal, from the Agent to the Privy Council. In original suits tried by the Agent an appeal lies to the High Court, from which again an appeal would lie to the Privy Council. In criminal matters the Agent “exercises the functions of a Magistrate” and has an “absolute jurisdiction” to punish offenders “with fine and imprisonment for five years, with or without hard labour.” Sentences “involving a punishment beyond that period or of greater severity must be submitted for the confirmation of the High Court.” A rule empowering the High Court “to call for the Agent’s proceedings in any case on petition” by the party sentenced by the Agent, has been held by the Bombay High Court to have been *ultra vires* of the Bombay Government, so far as cases falling under the Agent’s absolute jurisdiction are concerned. (See *Queen Empress v. Sarya* (1890), L. L. R. 15 Bom. 505; see also *Impx v. Ratnya* (1897), *ibid.*, 25 Bom. 667.) The Assistant Agent has the criminal powers of an Assistant Sessions Judge. (See Naylor, “Manual,” Bombay, 1892, pp. 13—15, and appx. p. 261; and “Local Rules and Orders made under Enactments applying to Bombay,” Bombay, Government Central Press, 1896, p. 140.)

## CONDITIONS OF APPEAL TO THE PRIVY COUNCIL (Continued).—

Colony, Possession, &c.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
<b>MAURITIUS.</b> <i>Remarks.</i> —Cf. Clark, "Colonial Law," p. 594. Under the Orders in Council of August 10th, 1903 (Stat. R. & O. Rev., 1904, vol. xi., tit. "Seychelles," p. 12), and December 8th, 1903. (Stat. R. & O. Rev., 1904, <i>ibid.</i> , at p. 37), an appeal lies to Supreme Court of Mauritius from Court of Seychelles. As to Rodriguez, see Ordinances No. 6 of 1866 and No. 16 of 1890. As to appeals under French administration, see "Laws," ed. by Rouilland, vol. i.	Order in Council of April 13th, 1831 (Stat. R. & O. Rev., 1904, vol. viii., "Mauritius," p. 21; Stat. R. & O. 1899, p. 1693). And see Orders in Council of October 23rd, 1851 ( <i>ibid.</i> , p. 25, confirming Ordinance 2 of 1830, providing that the Court d'Appel shall be called the Supreme Court), and December 12th, 1894, "Maur. Laws Rev." (edit. 1905), iv., pp. 71 <i>et seq.</i>	From final judgment of Supreme Court for sum above, or involving directly or indirectly claim to property or civil right of value of Rs. 10,000 (Order in Council of December 12th, 1894; £1,000 under Order in Council, April 13th, 1831).	Fourteen days.	Appellant's security within three months. Execution may be either carried out or suspended, respondent or appellant giving security as case may be.
<b>MEHWASSI VILLAGES.</b> <i>Remarks.</i> —The villages in six Mehwassi estates in the Khandesh District of the Bombay Presidency are a Scheduled District of the Bombay Presidency under pt. 2 of Sch. I. to the Indian Scheduled Districts Act, xiv. of 1874. By Act xi. of 1846 these six estates (and a seventh which is non-scheduled) were exempted from the operation of the Bombay Regulations for the administration of civil and criminal justice, and provision was made for the vesting of such administration in an Agent to the Governor, who, in the exercise thereof, was to be aided by such assistants as the Government might appoint, and be guided by Rules to be framed under the Act. No Rules were, however, promulgated till 1854.	For conditions of appeal, see <b>BRITISH INDIA.</b>			

and pending the issue of Rules the local customary law was followed. When Act xiv. of 1874 was brought into force in the villages in 1887, the Act of 1846 ceased to operate in them: but the local customary law, as modified by the Rules of 1864, remained in force—the customary law under s. 11 of Act xiv. of 1874, and the Rules under s. 7. The collector and magistrate of Khandesh is the Agent for the Government for the purposes of the Rules. An Assistant Collector is the Assistant Agent. In civil cases an appeal lies from the Assistant to the Agent, whose appellate decision is final. In such cases the Agent's Court is a High Court within the meaning of s. 3 (24) of the General Clauses Act, x. of 1897, and ss. 594—598 and 600 of the Code of Civil Procedure, 1882; and an appeal would lie in any such case, if a proper case for appeal, from the Agent to the Privy Council. In original suits tried by the Agent an appeal lies to the High Court, from which again an appeal would lie to the Privy Council. In criminal matters the Agent “exercises the functions of a Magistrate” and has an “absolute jurisdiction” to punish offenders “with fine and imprisonment for five years, with or without hard labour.” Sentences “involving a punishment beyond that period or of greater severity must be submitted for the confirmation of the High Court.” A rule empowering the High Court “to call for the Agent's proceedings in any case on petition” by the party sentenced by the Agent, has been held by the Bombay High Court to have been *ultra vires* of the Bombay Government, so far as cases falling under the Agent's absolute jurisdiction are concerned. (See *Queen Empress v. Sarva* (1890), I. L. R. 15 Bom. 505; see also *Impx. r. Ratnaya* (1897), *ibid.*, 25 Bom. 667.) The Assistant Agent has the criminal powers of an Assistant Sessions Judge. (See Naylor, “Manual,” Bombay, 1892, pp. 13—15, and appx. p. 261; and “Local Rules and Orders made under Enactments applying to Bombay,” Bombay, Government Central Press, 1896, p. 140.)



## CONDITIONS OF APPEAL TO THE PRIVY COUNCIL—(Continued)

Colony, Possession, &c.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
<p><b>MERWARA.</b> See AJMER-MERWARA.</p> <p><b>MINICOY.</b> See MADRAS.</p> <p><b>MIRZAPUR.</b> See UNITED PROVINCES OF AGRA and OUDH.</p> <p><b>MONTSERAT.</b> See LEEWARD ISLANDS.</p> <p><b>MOROCCO.</b>  <i>Remarks.</i>—Order in Council of November 28th, 1889 (Stat. R. &amp; O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 425, at pp. 441, 454). Appeal lies from decision of Supreme Court of Gibraltar under conditions above stated (art. 105; see GIBRALTAR). Appeal lies from Court of Morocco to Supreme Court of Gibraltar where amount involved equal to or more than £50 (art. 92). Security not more than £100 (art. 92). Supreme Court of Gibraltar has original concurrent jurisdiction in certain cases (see Reg. r. Spilsbury [1898] 2 Q. B. 615; Spilsbury v. Reg. [1899] App. Cas. 392). No appeal to Privy Council in criminal cases without special leave (Order in Council, 1889, art. 44).</p> <p><b>MUSCAT.</b>  <i>Remarks.</i>—Order in Council of November 4th, 1887, arts. 6—14 (Stat. R. &amp; O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 472, at pp. 474—478). Appeal from British Consul to High Court of Bombay where sum at stake equal to \$200 (art. 6). High Court of Bombay has concurrent jurisdiction in civil suits between British subjects (see art. 25, and cf. BOMBAY, BRITISH INDIA).</p> <p><b>MYSORE.</b> See INDIA outside BRITISH INDIA.</p>				

NAGA HILLS. See EASTERN BENGAL and ASSAM.  
 NASIRABAD (in BALUCHISTAN). See INDIA outside BRITISH INDIA.

B.C.L.

NATAL. See SOUTH AFRICA, ZULULAND : "Natal Laws."

From final judgment for sum above, or involving directly or indirectly claim to property or civil right of value of, £500.

Fourteen days.

Appellant's security regulated by Court below, not exceeding £500 : within three months. Execution may be carried out or suspended, respondent or appellant giving security as case may be. Where subject-matter is immovable property or stock, &c., thereon, and judgment does not charge, affect, or relate to actual occupation, no security is to be demanded from either party : where judgment does so charge, &c., no greater security than necessary to preserve its integrity.

NAVAL PRIZE COURTS.

*Remarks.*—These are Colonial Courts of Admiralty or Vice-Admiralty Courts. See 53 & 54 Vict. c. 27, 57 & 58 Vict. c. 39 (Stat. R. & O. Rev., 1904, vol. x., "Navy," pp. 275 *et seq.*). Safford and Wheeler, "Privy Council Practice," p. 96.

27 & 28 Vict. c. 25, ss. 5—8 ; and Stat. R. & O. Rev., 1904, vol. vi., "Judicial Committee," p. 101.

NEVIS. See LEEWARD ISLANDS.

NEW BRUNSWICK. See CANADA

NEWFOUNDLAND. See "Newfoundland Laws."

From judgment for sum above, or involving directly or indirectly claim to property or civil right of value of, £500.

Fourteen days.

Appellant's security regulated by Court below : within three months. Execution may be carried out or suspended, respondent or appellant giving good and sufficient security as case may be.

CONDITIONS OF APPEAL TO THE PRIVY COUNCIL (*Continued*)—

Colony, Possession, &c.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
<p><b>NEW HEBRIDES.</b> See FIJI ISLANDS.</p> <p><i>Remarks.</i>—Included in Pacific Ocean Order in Council, 1893, now see p. 354. See Safford and Wheeler, "Privy Council Practice," p. 665 <i>et seq.</i></p> <p><b>NEW SOUTH WALES.</b> See AUSTRALIA, COMMONWEALTH; AUSTRALIA, STATES.</p> <p><b>NEW ZEALAND.</b></p>				
<p><b>NICOBARS.</b> See ANDAMANS and NICOBARS.</p> <p><b>NIGER COAST PROTECTORATE: NIGER TERRITORIES.</b> See SOUTHERN NIGERIA.</p> <p><b>NORTH CACHAR.</b> See EASTERN BENGAL and ASSAM.</p> <p><b>NORTHERN NIGERIA.</b></p> <p><i>Remarks.</i>—Power of legislation by Proclamation as to administration of justice is vested in the High Commissioner: Order in Council of December 27th, 1899, art. 6 (Stat. R. &amp; O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 153, at p. 157).</p> <p><b>NORTH-WEST FRONTIER PROVINCE.</b></p> <p><i>Remarks.</i>—This province of BRITISH INDIA, which was constituted in 1901, comprises the Peshawar and Kohat Districts and portions of</p>	<p>Order in Council of May 16th, 1871 (Stat. R. &amp; O. Rev., 1904, vol. vi., "Judicial Committee," p. 68).</p> <p>For conditions of appeal see BRITISH INDIA.</p>	<p>From judgment for sum, or involving directly or indirectly claim to property or civil right amounting to or of value of £500.</p>	<p>Fourteen clear days.</p>	<p>Appellant's security regulated by Court below: within three months. Execution may be carried out or suspended, respondent or appellant giving security as case may be.</p>

the Hazara, Bannu, and Dera Ismail Khan districts which were transferred in that year from the Panjab. These areas are scheduled districts under pt. 5 of Sch. I. to the Scheduled Districts Act, xiv. of 1874; but their administration is now regulated by Regulation VII. of 1901 (Punjab and North-West Cole, 1903), under which the Judicial Commissioner is the High Court in all cases except proceedings against European British subjects, and persons jointly charged with them, and proceedings under certain enactments relating to trusts, mortgages, divorce, inventions, and stamp duties. In all the excepted cases the Chief Court of the Punjab is the High Court. An appeal lies to the Privy Council from the Judicial Commissioner and from the Chief Court.

NORTH-WESTERN PROVINCES. See UNITED PROVINCES of AGRA and OUDH.

NORTH-WEST TERRITORIES. See CANADA.

NOVA SCOTIA. See CANADA.

NUSKEL. See INDIA outside BRITISH INDIA.

NYASSALAND. Now BRITISH CENTRAL AFRICA. (*q.v.*)

OIL RIVER PROTECTORATE. See SOUTHERN NIGERIA.

ONTARIO. See CANADA.

ORANGE RIVER COLONY.

*Remarks*.—From judgment of High Court to Privy Council.

26—2

ORISSA. See BENGAL.

OTTOMAN DOMINIONS.

*Remarks*.—The Ottoman Order in Council,

Order in Council, 23rd June, 1904 (Stat. R. & O. 1904, p. 695), and Ordinance No. 13 of 1904, s. 16.	Judgment for sum involving claim to property or civil right amounting to £500.	Thirty days.	Security within two months.
Ottoman Order in Council, 1899, arts.	From final order of Supreme Court at Constantinople	Within prescribed time,	Appellant's security not exceeding £500; within one

CONDITIONS OF APPEAL TO THE PRIVY COUNCIL (*Continued*)—

Colony, Possession, &c.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
1873 (Stat. R. & O. Rev., vol. iii., p. 646), and Ottoman Dominions (Courts) Order in Council, 1895 (Stat. R. & O., 1895, p. 269), were repealed by Ottoman Order in Council, 1899, together with the other Ottoman Orders, and consolidated. But see Egypt. Supreme Court may give leave to appeal in any case (art. 133 [5]), and prerogative of Crown preserved (art. 135). No appeal in criminal cases unless by special leave of Privy Council (art. 62).	133—135 (Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 742, at pp. 763, 780, 781.	involving amount or value of £500.	or, if no time prescribed, fifteen days.	month. Execution may be carried out, respondent giving security, or suspended.
<p>           OUDH. See UNITED PROVINCES of AGRA and OUDH.            PACIFIC ISLANDS. See WESTERN PACIFIC ISLANDS: FIJI ISLANDS.            PAPUA. See AUSTRALIA: COMMONWEALTH.            PENANG (PRINCE OF WALES ISLAND). See STRAITS SETTLEMENTS.            PERIM. See ADEN.            PERSIA.  <i>Remarks.</i>—From Court of Consul-General to Privy Council.            PERSIAN COAST and ISLANDS.  <i>Remarks.</i>—From Court of Consul-General to High Court of Bombay on conditions prescribed         </p>	<p>           Order in Council of December 13th, 1889 (Hert. xviii., p. 945, at p. 997, Stat. R. &amp; O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 575, at p. 624).            Order in Council of December 13th, 1889 (arts. 23—31, Hert.         </p>	<p>           Final judgment, &amp;c., for sum, or involving directly or indirectly claim to money, goods, property, or civil right equal to or more than £500.         </p>	Fifteen days.	Execution may be carried out, respondent giving security, or suspended, appellant giving security. Appellant's security to prosecute appeal not more than £500 within one month.

xviii., p. 1024, at p. 1033, Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 667, at pp. 676).

For conditions of appeal see BRITISH INDIA.

by Indian law in regard to appeal from District Judge of High Court of Bombay. From Bombay High Court to Privy Council on conditions set out under BRITISH INDIA.

PESHAWAR. See NORTH-WEST FRONTIER PROVINCE.

PONDOLAND.  
*Remarks.*—Annexed to Cape Colony. See Cape Act, No. 5, of 1894, and CAPE OF GOOD HOPE, and Cape Act, No. 35, of 1896, s. 22. Pondoland is within jurisdiction of Court of Eastern districts (*ibid.*, s. 13). Appeal lies from Supreme Court of Cape on ordinary conditions.

POONA. See BOMBAY.

PRINCE EDWARD ISLAND. See CANADA.

PRINCE OF WALES ISLAND (PENANG). See STRAITS SETTLEMENTS.

PUNJAB.  
*Remarks.*—The scheduled districts of the Punjab, which were enumerated in pt. 5 of Sch. I, to the Scheduled Districts Act, xiv. of 1874, have mostly been transferred to the North-West Frontier Province. The non-scheduled districts—comprising by far the greater part of the Province—and apparently also such scheduled districts as remain under the Punjab Government, are subject to the jurisdiction of the Chief Court of the Punjab, as constituted by the Punjab Courts Act, xviii. of 1884 (Punjab and North-West Code, 1903). An appeal lies from the Chief Court to the Privy Council.

QUEBEC. See CANADA.

CONDITIONS OF APPEAL TO THE PRIVY COUNCIL (*Continued*)—

Colony, Possession, &c.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
QUEENSLAND. See AUSTRALASIA : AUSTRALIA.				
QUETTA. See INDIA outside BRITISH INDIA.				
RANGOON. See BUENIA.				
RHODESIA. See SOUTH AFRICA.				
RODRIGUES. See MAURITIUS.				
ST. CHRISTOPHER. See LEEWARD ISLANDS.				
ST. HELENA. <i>Remarks.</i> —The Order in Council will be found in Stat. R. & O. Rev., 1904, vol. xi., "St. Helena," p. 1 ; the Charter of Justice in "Parliamentary Papers," 1857—58, No. 388.	Order in Council of February 13th, 1839. Charter of Justice, 1857—58.	From judgment for sum above, or involving directly or indirectly claim to property or civil right of value of, £500.	Fourteen days.	Regulated by Court below ; within three months. Execution may be carried out or suspended, respondent or appellant giving security as case may be.
ST. LUCIA. See WINDWARD ISLANDS.				
ST. VINCENT. See WINDWARD ISLANDS.				
SAMBALPUR. See BENGAL.				
SARAWAK. <i>Remarks.</i> —No rules. As to the relations with Brunel and British North Borneo, see Agreements of May 12th, 1888 (Hert. xviii., p. 225), September 6th and 17th, 1888 (Hert. xviii., p. 227).				
SATARA. See BOMBAY.				
SEYCHELLES. See MAURITIUS. <i>Remarks.</i> —An appeal from the Supreme Court of Seychelles upon judgments exceeding	Order in Council, August 10th, 1903, on conditions of Mauritius appeals.	From judgment in civil cases for sums of 10,000 Rs. and upwards.		

2,000 Rs. lies through MAURITIUS on ordinary conditions : Order in Council of August 10th, 1903, art. 14 (Stat. R. & O. Rev., 1904, vol. xi., "Seychelles," p. 9), and also direct to the Privy Council.

SHAIKH OTHMAN. See ADEN.

SHAN STATES. See BURMA.

SHANGHAI. See CHINA.

SIAM.

Siam Order in Council, 1906, ss. 104—106 (*London Gazette*, April 10th, 1906, p. 2519).

From Full Court on final judgment involving amount or value of £500. No appeal in criminal case except by special leave (s. 73).

Fifteen days.

Execution may be carried out or suspended, respondent or appellant, as case may be, giving security. In all cases appellant to give security not exceeding £500, within two months.

SIERRA LEONE

*Remarks*.—As to Hinterland, see Order in Council of August 24th, 1895 (Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction") and Ordinances No. 11 of 1897, and No. 16 of 1898, and No. 35 of 1898, ss. 14, 15. See Order in Council of November 24th, 1891, as to "Gambia" (Stat. R. & O. Rev., 1904, vol. vi., "Gambia," p. 5).

Order in Council of February 26th, 1867 (Hert. xlii., p. 1085; Stat. R. & O. Rev., 1904, vol. vi., "Judicial Committee," p. 81). See also Order in Council of October 23rd, 1877 (Hert. xiv., p. 395).

Fourteen days.

Execution may be carried out, respondent giving security or suspended. Appellant's security regulated by Court below, not exceeding £300, within three months (g).

SINDEH.

*Remarks*.—The province of Sindh, in BRITISH INDIA, is a Scheduled District of the Bombay Presidency under pt. 2 of Sch. I. to the Indian Scheduled Districts Act, xiv. of 1874. Provision is made for the administration of civil and criminal justice therein by Bombay Act, xli. of 1866, as amended by subsequent Acts, including Bombay Act i. of 1906, which now extends to the whole of Sindh, though, at first, the backward district of Tharr and Parkar was excluded from its operation by s. 21 of the Act of 1866, until the Bombay Government

For conditions of appeal see BRITISH INDIA.

(g) *Sembla*, the conditions indicated in the Order in Council of February 26th, 1867, are not suspended by the Order in Council of October 23rd, 1877 (see art. 4).



CONDITIONS OF APPEAL TO THE PRIVY COUNCIL (*Continued*)—

Colony, Possession, &c.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
<p>should extend it thereto by an Order under that section. The Court of the Judicial Commissioner is the highest Court of Appeal in civil and criminal matters in Sindh. An appeal lies from it to the Privy Council. By the Indian Act v. of 1872, as amended by Act xx. of 1872, it is declared that the High Court of Bombay has not, and shall be deemed never to have had, jurisdiction over the province; but this enactment does not affect the Administrator-General's Act, 1874, or invalidate the grant of any probate or letters of administration made by the High Court, or affect the criminal jurisdiction of the High Court so far as regards European British subjects. The definition of "High Court" in s. 4 (j) of the Code of Criminal Procedure (Act x. of 1898) has the effect of excluding the Court of the Judicial Commissioner from exercising the jurisdiction of a High Court under the Code in reference to proceedings against European British subjects or persons jointly charged with European British subjects. Under the Indian Divorce Act (iv. of 1869) the Judicial Commissioner has the powers of a District Judge, and, in that capacity, is subordinate to the High Court at Bombay.</p>				
<p><b>SINGAPORE.</b> See STRAITS SETTLEMENTS. <b>SOMALILAND.</b>  <i>Remarks.</i>—Under Order in Council of October 7th, 1899 (Stat. R. &amp; O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 178, at p. 181), Protectorate Court held before Consul-General is to be deemed the High Court for purposes of the applied Acts, as one of these Acts is the</p>				

Indian Code of Civil Procedure (Act xiv. of 1882), and therefore appeals lie to Privy Council direct from Protectorate Court on same conditions as from BRITISH INDIA.

SONTHAL PARGANAS. See BENGAL.

**SOUTH AFRICA.**

*Remarks.*—Limits of South Africa Order in Council are *parts of South Africa* bounded by British Bechuanaland, German Protectorate, Rivers Chobe and Zambesi, Portuguese Possessions, Transvaal. Courts of British Bechuanaland have jurisdiction. British Bechuanaland annexed to Cape by British Bechuanaland Annexation Act, 1895, Act 41 of 1895: appeal either to High Court of Griqualand or Supreme Court of Cape of Good Hope from Court of Resident Magistrate (s. 11). An appeal lies from High Court of Southern Rhodesia (High Court of Matabeleland abolished by Southern Rhodesia Order in Council of 1898, s. 78) to Supreme Court of Cape where sum at issue is above £100, and thence to Privy Council on conditions stated under CAPE OF GOOD HOPE (s. 58) (Southern Rhodesia Order in Council, 1898, *London Gazette*, 1898, p. 7675, amended by Order, 1903, Stat. R. & O. Rev., 1904, vol. v. "Foreign Jurisdiction," p. 115, at p. 132; and Cape Act, No. 22, of 1898). Courts of Zululand have jurisdiction in Amatongaland (which was annexed to Zululand by letters-patent of November 30th, 1897, Stat. R. & O. Rev., 1904, vol. ix, "Natal," p. 6; Zululand itself being annexed to Natal by letters-patent of December 1st, 1897, Stat. R. & O. Rev., 1904, vol. ix, "Natal," p. 7).

SOUTH AUSTRALIA. See AUSTRALIA.

**SOUTHERN NIGERIA** (formerly OIL RIVERS PROTECTORATE), including Territories of Niger Coast.

*Remarks.*—Power of legislation by Proclama-

South Africa Order in Council, 1891 (Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 109; Stat. R. & O., 1898, p. 385).

CONDITIONS OF APPEAL TO THE PRIVY COUNCIL (*Continued*)—

Colony, Possession, &c.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
<p>tion as to administration of justice is vested in the High Commissioner (Order in Council of December 27th, 1899, art. 6: Stat. R. &amp; O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 167, at p. 170. See Proclamations 13 and 15 of 1902, as to the Supreme Court Order in Council, 1904, Stat. R. &amp; O., 1904, p. 187, and <i>supra</i>, p. 270, note (c)).</p> <p>SOUTHERN RHODESIA. See SOUTH AFRICA.</p> <p>STRAITS SETTLEMENTS.</p> <p><i>Remarks</i>.—Including Singapore, Malacca, Prince of Wales Island or Penang and Labuan. See also BRUNEI: SIAM.</p>	<p>Civil Appeals Ordinance, 1893, No. 2 of 1893, Part IV.</p>	<p>From final judgment or order of Court of Appeal for sum equal to or above \$2,500, or from interlocutory judgment in case certified as fit one for appeal.</p>	<p>Petition to Court of Appeal, or (Civil Appeals Ordinance, 1895, No. 14 of 1895) to Supreme Court if Court of Appeal not sitting; must be presented within six, or, by leave, within twelve months.</p>	<p>Regulated by Court below, not exceeding \$2,000. Execution may be carried out or suspended, respondent or appellant giving security as case may be.</p>
<p>SWAZILAND.—Appeal lies through Supreme Court of the TRANSVAAL on same conditions.</p> <p>SYLHET. See EASTERN BENGAL and ASSAM.</p> <p>TARAI PARGANAS. See UNITED PROVINCES OF AGRA and OUDH.</p> <p>TEMBULAND.</p> <p><i>Remarks</i>.—Within jurisdiction of Court of Eastern Districts in Cape Colony (see Cape Act,</p>	<p>Transvaal Ordinance No. 13 of 1904.</p>			

No. 35, of 1896, s. 13). See, for conditions of appeal, CAPE OF GOOD HOPE; also SOUTH AFRICA.

THAR and PARKAR. See SINDH.

TOBAGO. See TRINIDAD and TOBAGO.

TRANSKEIAN and other TERRITORIES (see pp. 304, 305).

*Remarks.*—Within jurisdiction of Court of Eastern districts in Cape Colony (see Cape Act. No. 35 of 1896, s. 13). See, for conditions of appeal, CAPE OF GOOD HOPE; also SOUTH AFRICA.

TRANSVAAL.

Trans. Proc. No. 14 of 1902, art. 39, Order in Council of September 15th, 1902 (Stat. R. & O. Rev., 1904, vol. vi., "Judicial Committee," p. 88).

From final judgment of Supreme Court of Transvaal, in respect of sums above amount or value of £2,000 sterling, or involving directly or indirectly the title to property or to some civil right amounting to or of the value of £2,000 sterling.

Thirty days.

Security to satisfaction of Court below within two months.

TRINIDAD and TOBAGO.

*Remarks.*—See Judicature Ordinance, 1879, Judicature (Tobago) Ordinance, 1898, Order in Council of November 17th, 1888, art. 37 (Stat. R. & O. Rev., 1904, vol. xiii., "Trinidad and Tobago," p. 4), declaring Supreme Court of Trinidad to be Supreme Court of Trinidad and Tobago; and Order in Council of October 20th,

Orders in Council of April 23rd, 1831 (repealed by Ordinance No. 8 of 1881), and June 20th, 1831. ("Laws of Trinidad," 1831—1848, p. 49).

Fourteen days.

Judgment for sum above, or involving directly or indirectly claim to property or civil right of value of, £500.

Appellant's security regulated by Court below, not exceeding £300. Execution may be carried out or suspended, respondent or appellant giving security as case may be.

CONDITIONS OF APPEAL TO THE PRIVY COUNCIL (*Continued*)—

Colony, Possession, &c.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
1898, art. 3 ( <i>ibid.</i> , p. 5), declaring the laws of Trinidad to be in force in Tobago.				
TURKEY. See OTTOMAN DOMINIONS.				
<p>TURKS and CAICOS ISLANDS.</p> <p><i>Remarks.</i>—Appeal lay from Supreme Court of Turks and Caicos to Court of Chancery, Jamaica, and thence to Privy Council on conditions stated under JAMAICA, and to Court of Errors (Ord. No. 4 of 1849). Appeal lies from Supreme Court of Turks and Caicos Islands to Court of Appeal and thence to Privy Council by leave of either Court (Ordinance No. 5 of 1903, repealing Nos. 4 of 1849, 1 of 1876, 5 of 1885, and see Frith v. Frith [1906] A. C. 254.</p>		No amount fixed	Thirty days.	Security to prosecute appeal within nine months. Execution stayed on appellant giving security.
<p>UGANDA.</p> <p><i>Remarks.</i>—Appeal lies from High Court of Uganda, constituted by Order in Council of August 11th, 1902 (Stat. R. &amp; O., 1904, vol. v., "Foreign Jurisdiction," p. 77), through Court of Appeal for EASTERN AFRICA (<i>q.r.</i>), <i>ibid.</i>, p. 49.</p>				
<p>UNITED PROVINCES of AGRA and OUDH.</p> <p><i>Remarks.</i>—These provinces, which, before 1902, were called the "North-Western Provinces and Oudh," are a part of BRITISH INDIA. The districts of Kumaon and Garhwal, the Tarai Parganas, Jaunsar Bawar in the Dehra Dun district, and certain portions of the Mirzapur district, in the province of Agra, are scheduled districts (see pt. 4 of Sch. I to the Scheduled Districts Act, xiv. of 1874, as partially repealed by Acts xiv. of 1881 and xx. of 1840), and are administered under rules made under s. 6 of the</p>	For conditions of appeal see BRITISH INDIA.			

Act of 1874. The High Court at Allahabad, as established by Letters Patent under the Indian High Courts Act, 1861 (24 & 25 Vict. c. 104), has jurisdiction over the whole of the Province of Agra. The Court of the Judicial Commissioner is the highest Civil Court of Appeal in Oudh. See the Oudh Civil Courts Act, xiii. of 1879, ss. 18, 20. Appeals lie from these Courts to the Privy Council. As to criminal matters, see the Oudh Courts Act, xiv. of 1891, as amended by Act xvi. of 1897. The High Court at Allahabad has original and appellate criminal jurisdiction over European British subjects in Oudh and on the line of railway from Allahabad to Jabalpur and the lands and buildings appurtenant thereto, other than the station at Satna : "Gazette of India," 1874, Pt. I, p. 484.

VANCOUVER ISLAND. See CANADA : BRITISH COLUMBIA.

VAN DIEMEN'S LAND. See TASMANIA.

VICTORIA. See AUSTRALIA : COMMONWEALTH : STATES.

VIRGIN ISLANDS. See LEEWARD ISLANDS.

VIZAGAPATAM. See MADRAS.

WEI-HAI-WEI.

Order in Council of July 24th, 1901 (Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," pp. 283, 300, 303). Appeal in civil cases from High Court, constituted by art. 12, through Supreme Court of Hong-Kong (*q.v.* and see art. 80). No appeal in criminal cases except by special leave (art. 37).

CONDITIONS OF APPEAL TO THE PRIVY COUNCIL (*Continued*)—

Colony, Possession, &c.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
<b>WEST AFRICA SETTLEMENTS.</b> <i>Remarks.</i> —In 1821, on the abolition of the African Company, the British possessions in that part of the world were united into one colony. The GOLD COAST, LAGOS, &c., have since been placed under separate governments. A new government of the West African Settlements (SIERRA LEONE and GAMBIA) was formed in 1874, but the plan of grouping these settlements has now been abandoned ("Encyclo. Laws of Eng.").				
<b>WESTERN AUSTRALIA.</b> See AUSTRALIA.				
<b>WESTERN PACIFIC ISLANDS.</b> <i>Remarks.</i> —Including Friendly, Navigators (subject to Samoa Conventions, see Hertslet, xviii., p. 1068; xxi., p. 1178, of June 14th, 1889), Union, Phoenix, Ellice, Gilbert, Solomon (so far as not German), and Santa Cruz Islands (Pacific Order in Council, 1893, Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 484). See FIJI ISLANDS.				
<b>WEST INDIES.</b> See BAHAMA ISLANDS, LEEWARD ISLANDS, WINDWARD ISLANDS, &c. <i>Remarks.</i> —As to history of West India Courts, see "Reports of West Indian Commissioners."				
<b>WINDWARD ISLANDS.</b> <i>Remarks.</i> —Windward Islands include Barbados, Grenada, the Grenadines, St. Vincent, St. Lucia. A Court of Appeal for the Windward Islands was established under 13 & 14 Vict. c. 15, repealed by 52 & 53 Vict. c. 33, with saving of jurisdiction created thereunder.				
An appeal lies through the Supreme Court of Fiji on ordinary conditions. Order in Council of March 15th, 1893, art. 88 (Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," at pp. 511, 512.		From judgment for sum above, or involving directly or indirectly claim to property or civil right of value of, £300.	Fourteen days.	Appellant's security regulated by Court below, not exceeding £500; within twenty-eight days. Execution may be carried out or suspended, respondent or appellant giving security as case may be. There is no statute in force.

the Orders in Council providing for entry of *pro forma* judgment where Judges equally divided (as, e.g., in LEEWARD ISLANDS), because by the legislation of the various islands coming within the group, where there is such a division of opinion the judgment appealed against is deemed to be affirmed (Order in Council of April 20th, 1883).

For conditions of appeal see BRITISH INDIA.

WITU PROTECTORATE. See ZANZIBAR.

ZAMBESI (BRITISH SPHERE NORTH OF). See AFRICA.

ZANZIBAR.

*Remarks.*—Appeal from Court of Zanzibar to High Court of Bombay, and thence to Privy Council. Cf. Zanzibar Order in Council, 1906 (*London Gazette*, May 15th, 1906, pp. 3345 *et seq.*, repealing former Orders of 1897, 1903, and 1904, and see Safford and Wheeler, "Privy Council Practice," pp. 696 *et seq.*). The Judge of His Majesty's Court for Zanzibar is a member of the Court of Appeal for EASTERN AFRICA (*q.r.*, and Order in Council of August 11th, 1902, Stat. R. & O. Rev., 1904, vol. v., "Foreign Jurisdiction," p. 49, art. 3).

ZHOB. See INDIA outside BRITISH INDIA.

ZULULAND.

*Remarks.*—See SOUTH AFRICA and NATAL; also Natal Act No. 46 of 1898, extending jurisdiction of Supreme Court of Natal to Zululand; Courts Act, 1898, Act No. 49 of 1898, clauses 57 *et seq.*; Supreme Court Act, 1896, No. 39 of 1896.





# INDEX.

ADEN, 186, 362  
 part of Bombay, 186  
 Admiralty, Colonial Courts of, 362  
 Africa, Order in Council, 333, 363  
 Agra, 412  
 Ajmer-Merwara, 363  
 Alberta, 217, 379  
 Alderney, 142, 389  
 Andamans and Nicobars, 364  
 Anguilla, 259  
 Antigua, 258  
 Approbation des Loix, Guernsey, 189  
 Ashanti, 266, 365  
 Assam and Eastern Bengal, 385  
 Australian Commonwealth, 279, 365  
 Federal Courts of, 283—285  
 Federal jurisdiction of High Court,  
 286  
 State Courts, 287  
 High Court of, 285  
 relation to State Courts, 286  
 appellate jurisdiction, 283  
 original jurisdiction, 286  
 legislative powers of, 280—282  
 Austria, 34  
 Civil Code basis of certain Swiss  
 cantonal systems, 36

BAHAMA ISLANDS, 237, 368  
 Barbados, 239, 251. *See* WINDWARD  
 ISLANDS.  
 Barotsiland, North-Western Rhodesia,  
 335, 368  
 Basutoland, 306, 368  
 Batavia, statutes of, 101, 114  
 new and old, adopted for Ceylon,  
 110  
 Belgium, 26  
 Bengal, 369  
 Bermuda, 240, 370  
 Bombay, 370  
 appeal from Zanzibar, 339, 370  
 Muscat, 332, 370  
 Persian coast and  
 islands, 346, 370  
 British Baluchistan, 371  
 British Bechuanaland, 306, 372  
 British Central Africa, 334, 372  
 British Columbia, 217, 330  
 British Guiana, 241, 372  
 law in, 119  
 under Dutch West India Company,  
 118—125  
 British Honduras, 243, 373

B.C.L..

British India. *See* INDIA.  
 British Islands, definition of, 126  
 British New Guinea, 375. *See* PAPUA.  
 British North Borneo, 349, 375  
 British possession, definition of, 126  
 British settlement, definition of, 127  
 Brunei, 198, 350, 376  
 Buddhist law, 59  
 Burma, 376

CANADA, Dominion of, 211, 378  
 Courts:  
 Supreme Court, 215  
 Election Petitions Court, 216  
 Exchequer Court, 216  
 powers of Parliament of, 212  
 Provinces, 211  
 powers of Parliaments, 213  
 Supreme Court, appeal to, 215  
 Canon Law, 11  
 Cape of Good Hope, 303—306, 382  
 under Dutch India Company, 112—  
 118  
 appeals from Southern Rhodesia,  
 343  
 British Bechuanaland, part of, 306  
 Carey, Laurent, 140  
 Cayman Islands, 246  
 under Jamaica, *ibid.*  
 Central Provinces (India), 382  
 Ceylon, 186—189, 333  
 Maritime Provinces under Dutch  
 East India Company, 108—112,  
 186  
 Kandy, kingdom of, 186  
 Channel Islands, 22, 132—142  
 China and Corea, 321, 383  
 Christmas Island, 193  
 Civil law, 13  
 "reception" of, 81  
 in Low Countries, 83  
 study of, at Dutch Universities, 84  
 Cocos Islands, 193  
 Code Civil, 20  
 Codification, 1—41  
 in France, 19—22  
 in Spain, 33  
 in Germany, 40  
 Colony, definition of, 126  
 Common law, 7—8  
 in Ireland, 11  
 in United States, 37  
 in Wales, 10  
 Conferences of jurists, 4

- Coorg, 382  
 of Normandy, 22, 133, 138  
 of Orléans, 136  
 of Paris, 22, 136, 255  
 "Coutume Reformée, La" (Jersey), 134  
 Cyprus, 149—153, 384  
 Ottoman law in, 149
- "DECISIONS and opinions," collections  
 of, 87  
 Denmark, 34  
 Dominica, 259  
 Dutch East India Company, 90—106, 112  
 administration, 92  
 Council of XVII., 91  
 judicial administration, 94  
 legal officials, 96  
 courts of justice, 97  
 out-stations, 106—118  
 statutes of Batavia, 101—106  
 end of, 106  
 West India Company, 104, 118—125  
 administration, 124  
 Council of Ten, 118
- EAST Africa, 337  
 Eastern African Protectorates, 334, 385  
 Court of Appeal for, 334  
 appeals from British Central Africa,  
*ibid.*, 338  
 East Africa, *ibid.*, 338  
 Uganda, *ibid.*, 341  
 Eastern Bengal (Assam), 385  
 Egypt, 40, 327, 386  
 Extente of the King (Guernsey), 139  
 Extritorial jurisdiction, 321
- FALKLAND Islands, 276, 387  
 Federated Malay States, 198, 387  
 Fiji Islands, 297, 387  
 France, codification in, 19—22  
 customary law of, 16, 17  
 "droit ancien," 14  
 "droit intermédiaire," 19  
 "droit, nouveau," 19  
 law of, 14—22  
 ordonnances of, 14—15  
 Parlements of, 17  
 Roman law of, 17—19
- GAMBIA, The, 261—263, 387  
 German law in Holland, 65  
*versus* Roman law, 66  
 Germany, 40, 41  
 Civil Code, 1900...40  
 other codes, 40  
 Gibraltar, 143—147, 388  
 appeal from Morocco, 330  
 jurisdiction in Morocco, 146, 330  
 Gold Coast Colony, 263—267, 388  
 northern territories, 267  
 "Grand Coustumier, Le," 133, 138  
 Grenada and Grenadines, 250, 252  
 Griqualand East, 389  
 Griqualand West, 389  
 Guernsey, 138—142, 389
- HAGUE Conferences on Private Inter-  
 national Law, 3  
 Herm, 142  
 Hindu law, 50  
 Widow Remarriage Act, 62  
 Holland, kingdom, 24  
 province of, Supreme Court, 80  
 "Ontwerp," 1820...24, 89  
 Hong Kong, 189—192, 389  
 appeals from Wei-hai-Wei, 191  
 jurisdiction in Macao, 191  
 Hungary, 34
- INDIA, definition, 42  
 British, 42, 373  
 Acts of Parliament relating to,  
 46, 165  
 Acts and Regulations of Indian  
 Legislatures, 47  
 Charter Acts, 168  
 Charters of Justice, 161—165  
 civil procedure in, 175—179  
 appeals to Privy Council,  
 civil, 178  
 Codes of, 47  
 application of, 63  
 Courts of, 172  
 Chartered and other High  
 Courts, 172  
 superintendence by, 184  
 criminal procedure in, 179—184  
 appeals to Privy Council, 183  
 Indian Councils Acts, 169—172  
 "Justice, equity and good con-  
 science" rule, 64  
 law of, 45  
 law of evidence, 173  
*res judicata* in civil, 175  
 and criminal cases, 181  
 legislative powers of, 161—171  
 personal law of Hindus, Mu-  
 hammadans, Buddhists,  
 etc., in, 50, 63  
 Hindu law in, 50—54, 62  
 Muhammadan law in, 54—  
 59  
 schools of, *ibid.*  
 Buddhist law in Burma, 59  
 Lex Loci Act, 60  
 "plan" of Warren Hastings  
 (1772), 58  
 Empire of, 42—64  
 outside British India, 42, 390—  
 392  
 protected States, 43  
 law of, 43  
 political tribunals in, 154,  
 155  
 extritorial jurisdiction,  
 157, 320  
 India (Dutch), statutes of, 115  
 Institute of International Law, 4  
 International conferences, 3  
 International Law Association, 5  
 Maritime Committee, 5  
 International treaties, 2  
 Ireland, law of, 11

Isle of Man, 128—132, 393  
Italy, 27

JAMAICA, 244, 393  
Japan, 40  
Jersey, 132—138, 393  
    registration of Orders in Council, 135  
    Courts, 137—138  
Jethou, 142  
Johore, 199

KURIA Muria Islands, part of Aden, 186

LABRADOR, 235  
Labuan, 194, 395  
    part of Straits Settlements, 195  
Lagos, 270—272, 395  
Leeward Islands, 257, 395  
Le Marchant, Thomas, 140  
Lex Loci Act (India), 60  
Low Countries, civil law in, 83  
    collections of "Decisions and  
    opinions," 87  
    codifications, 89  
    Courts and sources of law in, 68

MADRAS, 396  
Malay States, 198, 397  
Malta, 147—149, 397  
Man, Isle of. *See* ISLE OF MAN.  
Manitoba, 219, 380  
Manpur, 397  
Mauritius, 199—207, 398  
    French Codes in, 199—202  
    historical survey of judicial system,  
    202  
    Oil Islands, dependencies of, 208  
    appeals from Seychelles, 209—  
    210  
Mehwass villages, 398  
Montserrat, 259  
Morocco, 329, 400  
    appeal to Gibraltar, 146, 330  
    jurisdiction of Gibraltar Supreme  
    Court, 330, 332  
Muhammadan Courts, Cyprus, 153  
    Gambia, 263  
    British North  
    Borneo, 350  
Muhammadan law in British India, 54  
Muscat, 332, 400  
    appeal to Bombay, 332

NATAL, 306—310, 401  
Native Courts, Gambia, 262  
    Gold Coast, 266  
    Sierra Leone, 275  
    New Zealand (Land  
    Court), 301  
    Fiji Islands, 299  
    Natal, 308, 309  
    Transvaal, 315  
    Uganda, 342

Naval Prize Courts, 401  
Netherlands, 23  
    early Courts in, 74—79  
    kingdom, 24  
    early law of Republic, 71  
Nevis, 258  
New Brunswick, 220, 380  
Newfoundland, 234, 401  
New Hebrides, 352  
New South Wales, 289—290, 367  
New Zealand, 299—302, 402  
Nigeria. *See* NORTHERN NIGERIA AND  
    SOUTHERN NIGERIA.  
North-Eastern Rhodesia, 335  
North-Western Rhodesia, 335  
Northern Nigeria, 267—269, 402  
Northern Territories of Gold Coast, 267  
North-West Frontier Province, 402  
North-West Territories, 222, 332  
Norway, 36  
Nova Scotia, 223, 380  
Nyassaland. *See* BRITISH CENTRAL  
    AFRICA.

OCTROY of January 10, 1661, in Dutch  
    East Indies, 104  
    in South Africa, 117  
Oil Islands. *See* MAURITIUS.  
Ontario, 225, 381  
"Ontwerp" of 1820, 24, 89  
Orange River Colony, 316—320, 403  
Ottoman Dominions, 325, 403  
    Order in Council, Egypt excluded,  
    325  
Oudh, 412

PACIFIC Islands, 351  
Papua, 297, 366, 368  
Pemba, 338  
Persia, 344, 404  
Persian coast and islands, 346, 404  
    appeal to Bombay, 346  
Pondoland, 405  
Portugal, 34  
Précepte d'Assize (Guernsey), 138  
Prince Edward Island, 228, 381  
Private international law, 1—5  
Privy Council, general right of appeal to,  
    356—358  
    Judicial Committee, constitution  
    and powers of, 358—360  
Punjab, 405

QUEBEC, 229, 381  
    Coûtume of Paris in, 22, 229  
    arrêts de Conseil du Roi, 230  
    Codes, 230  
    Courts, 230—233  
Queensland, 291, 367

RODRIGUES (part of Mauritius), 207  
Roman law, adoption of generally in  
    United Provinces, 13, 14, 86

- Roman law—*continued*.  
 in France, 17  
 German *versus*, 66  
 "reception" of, 81  
 revival of, 81  
 study of, at Dutch universities, 84  
 Roman-Dutch law, 65—125  
   i. in Holland, 65  
     early German law, 65  
     Frankish period, 65  
     independence of Courts, 68  
     under Republic of Netherlands, 71  
     provincial codifications, 72  
     general codifications, 89  
     Courts, 74—81  
     Supreme Court of Holland, 80  
     effect of revival of Roman law, 81  
     "Decisions and opinions," 87  
   ii. in Dutch Colonies, 90  
     in Cape Colony, 308  
     in Natal, 307  
     in Transvaal, 311  
     in Orange River Colony, 317  
     in Southern Rhodesia, 341  
     in British Guiana, 241  
     in Ceylon, 187  
 Russia, 37
- SARAWAK, 351, 406  
 Sark, 142  
 Saskatchewan, 233, 381  
 Scotland, law of, 8  
 Siam, 347—349, 406  
   jurisdiction of Straits Settlements  
     Supreme Court, 198, 348  
 Sierra Leone, 272—276, 407  
 Socotra, under Aden, 186  
 Somaliland, 340, 408  
 Soudan, 329  
 South Africa,  
   Act, 303  
   Order in Council, 408  
   out-station of Dutch East India  
     Company, 112  
 South American Republics, codes, 39, 46  
 South Australia, 292, 367  
 Southern Nigeria, 269—272, 409  
 Southern Rhodesia, 343  
   Roman-Dutch law in, 343  
   appeals to Cape Colony, 343  
 Spain, codification in, 33  
   collections of laws of, 30—33  
     Cedulas reales, 33  
     Fuero real, 30  
     law of, 28—33  
     Partidas, 30  
     Recopilacion, 32  
       de las Indias, 32  
     sources of law of, 29  
 St. Christopher, 258  
 St. Helena, 277, 406
- St. Lucia, 22, 250, 254  
 Straits Settlements, 192—198, 410  
   jurisdiction in Siam, 348  
     Brunei, 351  
 St. Vincent, 250, 256  
 Sindh, 407  
 Swaziland, 316, 410  
 Sweden, 37  
 Switzerland, 35—36  
   cantons, uncodified systems, 35  
   systems based on French Code Civil,  
     36  
     Austrian Civil  
       Code, 36  
     Zurich Code, 36  
 Seychelles Islands, 208, 406  
   appeals to Mauritius, 209, 210
- TASMANIA, 294, 367, 410  
 Tembuland, 410  
 Terrien's Commentaries, 133  
 Tobago, 247, Trinidad and, 248, 411  
 Transkeian territories, 411  
 Transvaal, 311—316, 411  
 Trinidad, 246, and Tobago, 248, 411  
 Turkey, 37  
 Turks and Caicos Islands, 245, 412  
 Tynwald, Court of, 129, 130  
   Acts of, *ibid*.
- UGANDA, 341, 385, 412  
   native Courts, 342  
 United Provinces. *See* NETHERLANDS,  
   HOLLAND  
 United Provinces of Agra and Oudh, 412  
 United States, 37  
   codifications of State laws, 38
- VICTORIA, 293, 367  
 Virgin Islands, 259
- WALES, law of, 10  
 Wei-hai-Wei, 323, 413  
 West Africa Settlements, 414  
 Western Australia, 296, 368  
 Western Pacific Islands, 414  
 Windward Islands, 239, 250, 414
- YUKON territory, 233, 378, 381
- ZANZIBAR, 338, 415  
   appeal to Bombay, 339  
 Zululand, 310, 415  
   part of Natal, 310  
 Zurich, Code of, 36

















